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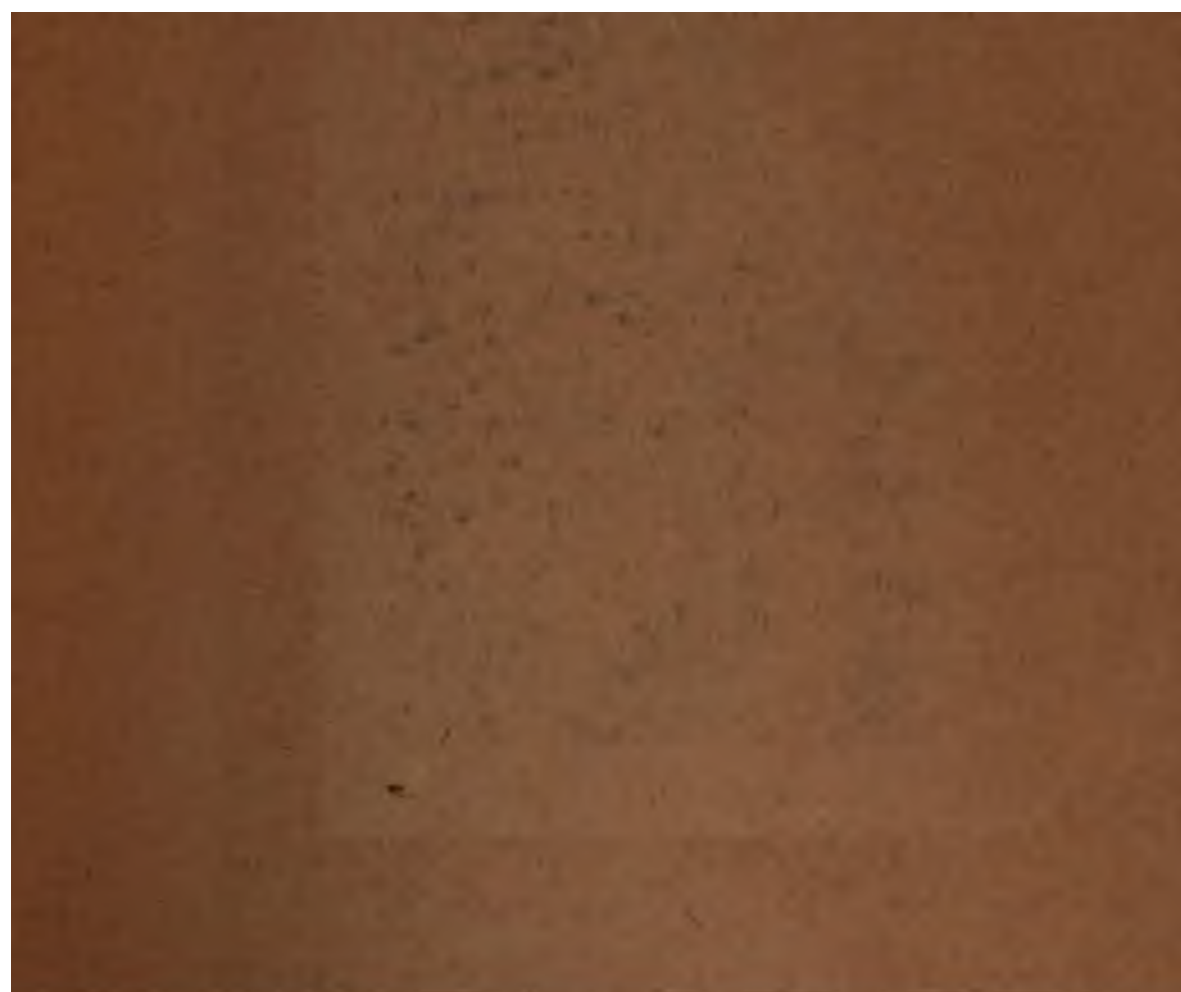
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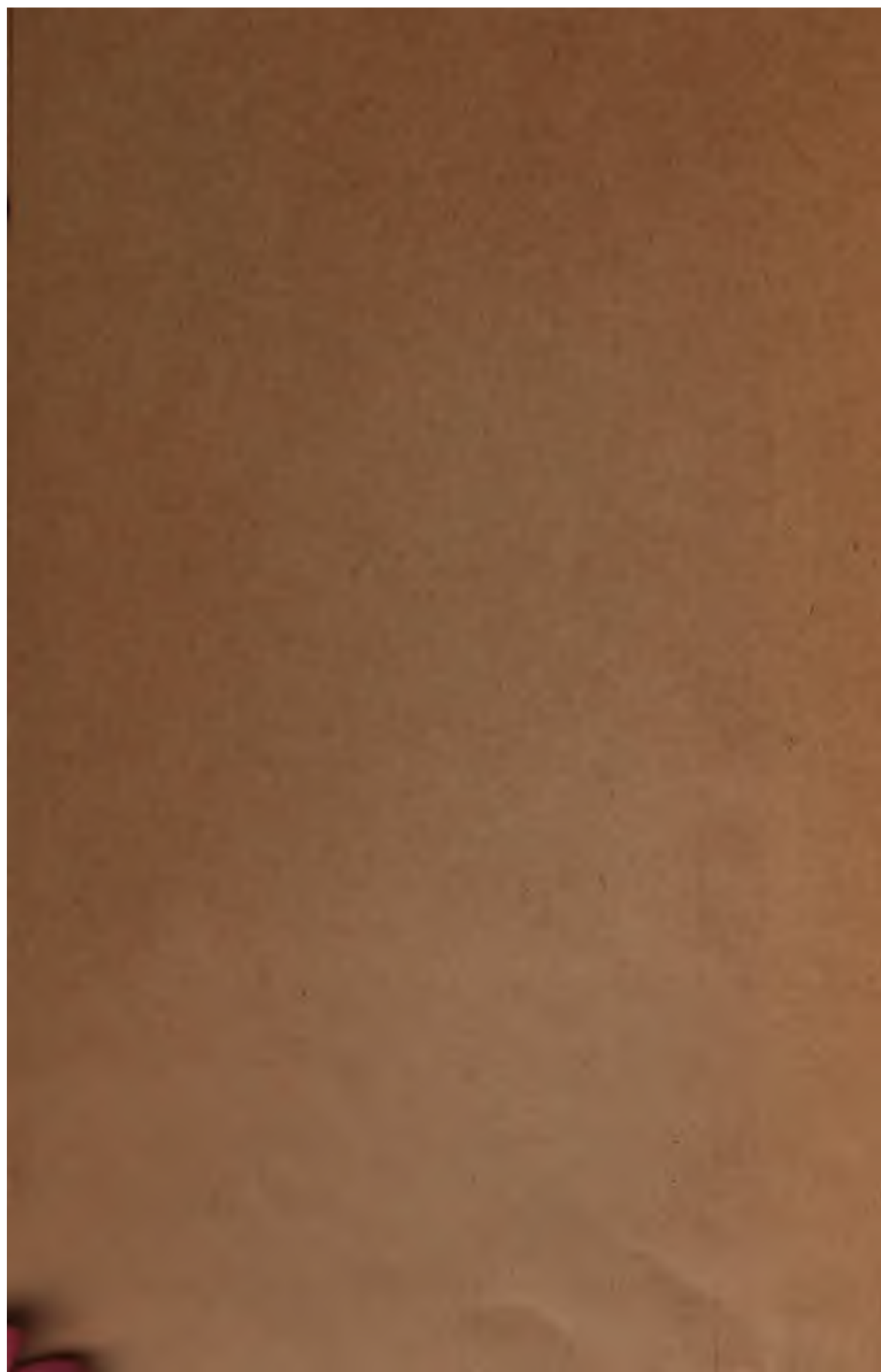




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# The American Political Science Review

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# The American Political Science Review

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No. 1

## THE DEVELOPMENT OF DEMOCRACY ON THE AMERICAN CONTINENT<sup>1</sup>

L. S. ROWE

The year that is about to close marks the hundredth anniversary of the independence of many of the republics of the American continent. The long struggle which began in 1808, and which did not reach full fruition until the beginning of the third decade of the nineteenth century, possesses all the characteristics of a great epic; marked by a degree of devotion to the ideals of liberty and independence which will ever constitute the great heritage of the people of this continent.

Within these last twelve months we have also seen the republican system of government fully organized in some of the older monarchies of Europe and in the new and independent states established by the Treaty of Versailles. The period that has elapsed is much too short to permit of any adequate estimate of the permanence of the political systems that have been established, or of the manner of their operation. On the other hand, the development of democracy in the republics of America has extended over a period sufficiently long to make possible an inventory of its strength and weakness and some formulation of the requisites for further progress.

<sup>1</sup> Presidential address delivered before the American Political Science Association at Pittsburgh, Pa., December 27, 1921.

The common purposes and ideals which the political leaders in the several republics so consistently pursued during the long struggle for independence, laid the lasting foundations of the Pan American movement, which in later years was destined to play so important a part in the destinies of this continent. In fact, one of the most inspiring characteristics of the early struggles of the American republics was the spirit of coöperation and mutual helpfulness which led large groups of patriots from remote sections of the continent to endure almost unbelievable hardships in order to support their struggling brethren. Patriots from Venezuela and Colombia undertook long and arduous journeys in order to support the people of Ecuador, and groups of republican enthusiasts from Argentina and Chile braved the hardships of the Andes in order to assist Peru in her hour of need.

A century has now elapsed since these heroic struggles, and it is both fitting and helpful that we undertake an estimate of the results accomplished. This means a retrospect of the development of democracy with special reference to the conditions which have determined its growth on the American continent; the circumstances that have favored its progress and the obstacles that must be overcome in order to move forward toward the fulfilment of its higher possibilities.

Although the history of republican institutions in Central and South America has been in many respects a checkered one, it is a notable fact that, with two exceptions—and those extending over a comparatively brief period—all these nations have adhered to the republican form of organization even when the actual operation of the system was far removed from that contemplated by the founders. The record of the American republics during the century that has elapsed since their declaration of independence has made possible a more accurate study of the relation between democracy as a form of social organization on the one hand, and republican institutions as the political expression of such organization on the other.

Now that democracy has become the goal toward which the nations of the world are striving, it is difficult for us to pic-



ture the dismay, amounting almost to horror, which the term "democracy" inspired a century ago. Even to the founders of our constitutional system it was synonymous with "mob rule." Their devotion to republican institutions was accompanied by an equally pronounced antagonism to democracy. It was not until well toward the second half of the nineteenth century that it began to be apparent that the effective operation of republican institutions requires a democratic social organization and that the infirmities from which republican institutions often suffer are due to the absence of such a democratic foundation.

In fact, the problem of overwhelming importance today confronting the republics of the American continent is to bring their social organization into closer harmony with their political institutions. The wide discrepancy existing between these two elements of national life is the cause of many evils and the source of much political unrest. While the ends in view are clear and unmistakable, the measures to be adopted for their attainment are at times difficult to formulate and often even more difficult of adoption.

The first and most important lesson to be learned is that we cannot hope for the smooth operation of republican institutions as long as any considerable portion of the population remains in a condition of abject economic dependence. In so many sections of the continent, the condition of the laboring classes, especially that of the agricultural laborer, so closely approaches serfdom as to be hardly distinguishable from it. As long as such a condition of economic subjection exists, the political destinies of the country will be managed by small groups of men removed from the control of any effective public opinion, and will slowly, but surely, degenerate into oligarchy. Election laws no matter how perfect are of no avail, and it is equally futile to increase the number of elective offices in the hope that thereby the participation of the masses of the voters in public life will be strengthened. While it is comparatively easy for the student of political institutions to point out existing shortcomings, the formulation of a workable solution presents difficulties which at times seem to be unsurmountable.

There are, however, a few cardinal principles of outstanding importance which must be made an integral part of national policy in those republics in which the laboring population or any considerable portion thereof is illiterate, unorganized, and with a standard of life dangerously close to the margin of subsistence.

In the first place we must learn to distinguish between national wealth and national welfare. There is a deeply rooted belief in America and elsewhere that these two terms are synonymous, and that with the progressive exploitation of the natural resources of a country through the investment of foreign or native capital the condition of the masses is certain to improve. No one will deny that there is a measure of truth in this assumption in a country in which the laboring classes are well organized and therefore in a position to secure for themselves a fair share of the national product. But in the circumstances in which some of the republics of the American continent find themselves, with a laboring population unorganized and with a relatively low standard of life, the exploitation of natural resources is inevitably accompanied by an increasing exploitation of the laboring classes. It is true, and it is to the everlasting credit of North American enterprise in Latin American countries, that, recognizing the importance of a stable labor supply, as well as the possibility of increased industrial efficiency through better living conditions, earnest and notable efforts have been made to improve of the condition of the laboring classes. It is also true that the governments in Central and South America are today making earnest efforts toward the same end. But the road still to be traveled is distressingly long.

It is by no means a fortuitous circumstance that where labor is adequately organized, as in certain sections of Argentina and in the nitrate provinces of northern Chile, the wage scale is not only high, but out of all proportion to the remuneration received by labor in adjacent countries. Moreover, it is generally assumed that these conditions will be remedied as soon as the process of popular education has proceeded far enough to

produce an economic awakening on the part of the laboring classes. Efforts to improve popular education are not lacking; in fact real, national sacrifices are being made for this purpose, but owing to limited financial resources the advance is necessarily slow and in the meantime the present generation is suffering from all the degenerating influences of inadequate nutrition, bad housing, and unfavorable sanitary surroundings.

It would seem, therefore, that the only possible solution to this social problem, of overwhelming importance to the political future of the Latin American republics, is the determination by the governments of a minimum wage scale, both in agriculture and industry, and the elimination of the many abuses which now exist, due to the dependence of the agricultural laborer on the stores established on their estates by the great landed proprietors. If there is one lesson to be learned from the experience of a century of economic development, it is that this drastic measure is necessary as a first step toward economic emancipation, without which the great mass of agricultural laborers and even certain sections of industrial labor cannot be made a real and vital factor in the development of a virile democracy.

The importance of such a step as part of a comprehensive plan of social legislation has been greatly increased by reason of the situation which has arisen as the result of the World War. The social upheaval in Europe and, especially, in Russia, has had a far-reaching influence on the laboring classes throughout Latin America. The demand for the betterment of living conditions is becoming more and more insistent and its influence on political life increasingly apparent. Unless measures are taken to satisfy this demand, the growing discontent is certain to manifest itself in political unrest and a possible undermining of established order. Legislation of the kind referred to has therefore become, not merely a step toward social justice, but a requisite for future stability. It is, of course, true that any system of minimum wage laws must be supplemented by a comprehensive plan of social legislation designed to give the increased income of the laboring classes its greatest effectiveness in raising the standard of living. This involves the construc-

tion of laborers' dwellings by the public authorities, national or local, the improvement of recreation facilities, and, above all, the restriction and ultimate elimination of the use of intoxicating liquors, which have done so much to undermine the physical and moral welfare of the laboring classes throughout the continent.

This step once taken, a further problem confronts those countries such as Mexico and most of the other republics of Central and South America whose social system is based on great landed estates; namely, the development of a class of small landed proprietors. The problem of developing through any governmental action a class of small land owners presents enormous difficulties. It is futile either through expropriation or confiscation to break up the large agricultural holdings into small farms. Unless the agricultural population is equipped with the technical preparation for farm management, combined with a strong and abiding desire for individual ownership, all governmental effort is doomed to failure, and usually expensive failure.

The disastrous experience of Mexico under the Madero régime in the attempt to develop a class of small farmers is most instructive. We are so apt to forget that where the traditions of a people have led them to the common ownership of land, rather than individual proprietorship, as was the case with the Indians of the greater part of Mexico, the desire for individual ownership is absent and must be gradually developed. The experience thus far acquired would seem to indicate that however necessary the development of a class of small farmers may be to the further progress of democracy in the republics of Latin America, this end will only be attained through the gradual transformation of tenants into proprietors, much in the same way and by the same slow and difficult process through which increasing numbers of negro tenants in our southern states are being transformed into land proprietors.

Running parallel with these economic changes, and only secondary in importance to them, are certain political principles, the recognition of which is essential to the normal and progres-

sive development of republican institutions on the American continent.

In all the republics of the American continent—North, Central, and South America—there exists a lack of harmony between inherited political ideas and present political and economic needs. In some cases, as in Mexico and Argentina, sectional feeling, either inherited from the Spanish motherland, or developed by reason of lack of means of communication and transportation, have led to the adoption of a federal system of government, whereas manifest national needs dictate the importance and necessity of an unified, centralized, national system. It is true that in the actual operation of the federal system in both Mexico and Argentina, the national government has established a control over the respective states and provinces, which means a wide departure from the purpose and intent of the framers of the constitutional system, but this wide discrepancy between the written constitution and the actual system carries with it the severe penalty of undermining the respect for law and opening the door to serious abuses of power.

In fact, the history of federal government on the American continent during the last century raises the question whether the federal system, wherever it has been tried, is anything more than a transition stage, a compromise designed to satisfy political instincts, ideas, and prejudices inherited from an earlier period, and doomed to disappear as soon as political ideas, necessarily of slow adjustment, have adapted themselves to present economic and social needs.

In the study of the political development of the republics of the American continent, it is a matter of very great importance that students of political science analyze with much greater care than has hitherto been the case the causes of political unrest in certain sections of the American continent and that we distinguish clearly between violent changes that have a deep social significance and those revolutionary movements that represent nothing more than the selfish ambitions of a few unscrupulous leaders.

As our own history has shown, and as is shown by the history of every republic of the American continent, political impasses at times develop, for which revolution furnishes the only solution. No matter how much we may condemn violence, no matter how strongly we may preach against armed opposition to the existing order, the fact is that great social changes, such as took place in the United States during the Civil War, in Chile during the revolution of 1891, and in Mexico during the revolution of 1910, are brought about through upheavals which are usually accompanied by violence. We may look forward to a time when humanity may be able to effect such changes by the peaceful processes of constitutional evolution, but we must also recognize the fact that we cannot attain this great end until the machinery for adapting political organization to present economic and social needs functions much more smoothly and with much greater responsiveness to national needs than is the case at the present time.

A further political principle which the experience of the last one hundred years has demonstrated, and which possesses a deep and far-reaching significance in our present international situation, is that the qualities that prepare a people for self-government—respect for law, political self-control, acquiescence in the will of the majority, and willingness to use the slower processes of discussion rather than brute force in order to bring about political changes—cannot be imposed from without, but are only acquired as the result of much bitter experience and as the outcome of a slow and painful process of education.

The underlying missionary spirit of the American people often leads them to the belief that they can carry the spirit of order and self-government to less fortunate sections of the American continent, even if the agency used is the military arm of the government. While such government has always been characterized by great integrity and great ability in the execution of public works and other technical enterprises, it has always signally failed in preparing the people over which it has had control for the responsibilities incident to the management of their own affairs. This is due in part to the limitations of the military

mind, and in part to the conditions under which military governments are established.

There is a further principle which I desire to emphasize because of its great importance to the development of democracy on the American continent. Today there exists on this continent a series of irritating international disputes which are not only a menace to the peace of the New World but also a real obstacle to democratic progress. The majority of these questions are boundary disputes inherited from the colonial period. Their existence has been a constant obstacle to the normal development of republican institutions on the American continent. The presence of these international dangers has had a two fold effect on domestic institutions. They have in the first place diverted national attention from the pressing social problems upon the solution of which any real advance in democratic organization depends, and in the second place they have diverted an altogether undue share of the national income to military and naval purposes, thus injuring such fundamental services as public education, sanitation, public works, and other productive enterprises. There is no international question now confronting the American republics in their relation with one another that cannot readily be solved through the orderly processes of an international tribunal, and until they are thus settled they will present a serious obstacle to the solution of pressing domestic problems, to the development of a normal, enlightened and controlling public opinion and to the further advance of democracy.



## MONTESQUIEU AND DE TOCQUEVILLE AND CORPORATIVE INDIVIDUALISM

WILLIAM HENRY GEORGE

Article 16 of the Declaration of the Rights of Man and the Citizen, prefixed to the French Constitution of 1791, reads as follows: "Every society in which a guarantee of rights is not assured nor a separation of powers determined does not have a constitution." Without question the men of 1789 had come under the influence of Montesquieu as well as of John Locke. It is true that a separation of powers is to be found in the *Two Treatises of Government*; but that doctrine is set out in bolder relief and more sharply defined by Montesquieu than by Locke. However, the men of 1789 took only one half the teachings of Montesquieu; the other half they rejected. The exclusive, oligarchical, tyrannical spirit of the corporations of the ancient régime, the abuse of the principle of aristocracy—privileges without services, as Taine puts it—the growth of the spirit of equality as a result of the industrial revolution, all set men stoutly against a "corporative" (in contrast with a pulverized) structure of society. Rousseau, Turgot and the Physiocrats demanded a leveling of hierarchized society: the mountains must be brought low, the valleys filled up and a highway made for the plain man to walk thereon. It was only with the Restoration that the value of an aristocratic element—from Montesquieu's point of view a corporative element—came into prominence. It was widely discussed during that period, and Montesquieu was the authority of the day.

Of the two phases of Montesquieu's thought—a separation of powers and a corporative foundation—the former has survived in current political philosophy. It was the phase selected by the men of 1789, and as progress in democracy from 1814 has been in a sense a return to the early days of the French Revolu-

tion, it was but natural and inevitable that the first phase should survive to the exclusion of the second. This prevalent view is expressed by Mr. Ernest Barker as follows: "A division of functions of government is thus characteristic of Montesquieu: it is only a secondary consideration that the division is a division among different classes."<sup>1</sup> On the other hand, a brilliant, although somewhat paradoxical, French academician, Émile Faguet, who is not without leanings toward aristocracy and therefore capable of orienting himself toward Montesquieu's point of view, maintains that "the central point and vital knot of Montesquieu's political conception" is his idea of a hierarchized, corporative society made up of "*corps intermediares*;" and he quotes from *L'Esprit des Loïs* to sustain his contention.<sup>2</sup> Faguet's interpretation is important. Montesquieu does insist that powers intermediate, subordinate and dependent are necessary to a monarchy. The subordinate, intermediate power most natural is that of the nobility. In a monarchical government power is not applied immediately, as Montesquieu points out: the monarch tempers it in the giving. He makes a distribution of his authority. The nobles should form a body (*corps*) which should have the right to arrest the enterprises of the people, as the people should have the right to arrest those of the nobles.

It is not affirmed that Montesquieu's separation of powers is necessarily linked to his division of classes. In its broadest application his doctrine is that of power limiting power so that sovereignty shall not be in the hands of any man or party, but in law and reason. It is adaptable to republics as well as to monarchies. But there can be no doubt that in Montesquieu's thought a division of powers naturally presupposes a division of classes, for he had in mind England. And even his doctrine of democracy is corporative in that sovereignty resides in "*le peuple en corps*." "I have said," to quote from *L'Esprit des Loïs*, "that the nature of republican government is that the people in body, or certain families would have the sovereign

<sup>1</sup> Barker, *Political Thought of Plato and Aristotle*, p. 484.

<sup>2</sup> Faguet, *La Politique Comparée*, p. 46.

power.”<sup>2</sup> The cast of Montesquieu’s legal mind was essentially corporative.

So long as society was pulverized as a result of the French Revolution the half of Montesquieu’s political creed lay in the discard. But when syndical chambers and mutual aid societies in France began to give to society “bodiness,” the neglected half was reclaimed and the idea of intermediate bodies as a check on power sprang up. The first publicist in France to make an adaptation of Montesquieu’s doctrine to the new day of social and political equality, and also of industrial group life, was De Tocqueville.

The contribution to political theory made by De Tocqueville consists in his comparison of the corporative society of the ancient régime with the new, individualized and democratized society of America, and the deduction therefrom of certain conclusions applicable alike to America and to Europe. Two things are perfectly plain: De Tocqueville had studied profoundly the structure of society before the French Revolution, and he was well versed in Montesquieu. With this intellectual equipment he went to America to study on the ground the new democracy at work. He found on the one hand a pulverized society—isolated individuals striving after equality—and on the other a centralizing tendency gravitating toward despotism. It was precisely what the French Revolution had produced by the destruction of all corporative, group life—territorial and professional. Isolation and despotism were the fruit of revolutionary planting. Individualism and Jacobinism, Locke and Rousseau, had met and kissed mutually. The remedy, he thought, lay in a revival under a new form of the secondary bodies of the ancient régime—a reintroduction of a modified corporative society even with a public law status.

The outstanding feature of American democracy De Tocqueville found to be equality of conditions: “Among the new objects which, during my sojourn in the United States, have attracted my attention none has more forcibly struck me than the

<sup>2</sup> Montesquieu, *L'Esprit des Lois*, bk. III, ch. 2.

equality of conditions.”<sup>4</sup> That he had in mind a certain economic and social equality as well as a political one is shown by his stress upon universal leveling, illustrated by impoverishment of the rich and enrichment of the poor. According to his view America had reached an equality almost complete. The law of succession had ordained an equal sharing of the goods of the father among his children, and fortunes had become equal. Equality of conditions was a fact of the social state in America, as De Tocqueville viewed things, and one which had to be understood if her political institutions were to be explained, because the social state, he thought, was the cause of the most of the laws, customs and ideas which regulate the conduct of nations. In the light of De Tocqueville’s emphasis on equality of conditions it is difficult to comprehend why Henry Michel should limit De Tocqueville’s doctrine to political equality. Doubtless De Tocqueville’s primary interest was in equality of rights—political rights—for he is continually comparing democracy with aristocracy; but the equality he saw went deeper, he thought, than political rights: it was social equality. “*Les biens nouveaux*” were a result of the type of equality he saw.

But equality conceals two dangers, anarchy and servitude. Anarchy easily results from isolation and independence: “Equality which renders men independent one of another leads them to contract the habit and taste of following in their individual actions only their own will. This entire independence, which they enjoy continually as regards their equals and in the affairs of private life, disposes them to consider with a discontented eye all authority and suggests to them soon the idea of political liberty”<sup>5</sup> which can be pushed to anarchy. Out of the same condition of isolated independence, despotism and servitude can issue. Individuals without a bond of common interest soon forget the common good, and all is left to the state which in time becomes an administrative bureaucracy: “When conditions are equal each voluntarily isolates himself within himself

<sup>4</sup> DeTocqueville, *Démocratie en Amérique*, (15me ed.), tome I, introduction. p. 1.

<sup>5</sup> *Ibid.*, tome III, pp. 472-73.

and forgets the public.”<sup>6</sup> The drift is a natural one: each relies upon his own resources and becomes engrossed in his own affairs, and abandons the care of public matters to the representative of collective interest—the state. In short it is easy in a pulverized society, so De Tocqueville thinks, to found a government unique and all-powerful: the instincts suffice. Ignorance coupled with equality completes the process: “The concentration of powers and individual servitude will increase therefore among democratic nations not only in proportion to equality but also in proportion to ignorance.”<sup>7</sup> The fundamental cause of it all was the disappearance of secondary bodies and with them local liberties. The state would suffer no intermediary between itself and its citizens. Local authorities were vanishing or falling under central authority. All the privileges of the lords, the liberties of cities, the provincial administrations, had been destroyed or were in the process of being destroyed. As a result the state had taken to itself all power and activity—charity, education and a large part of industry. Only the state inspired confidence because it alone seemed to have force and duration. Such is De Tocqueville’s analysis of democratic despotism.

To be sure such despotism is enlightened; but it is not the less despotic. It does come from below rather than from above: but that only renders it more insidious. It is the logical result of narrow, egoistic individualism. Arising out of the people, democratic despotism works for the good of the people, De Tocqueville noted; but it wishes to be the unique agent and the sole arbiter. It is the shepherd and they are the sheep. It is the teacher and they are the pupils. It is the rulers and guardians of Plato’s *Republic*, and they are the passive, inert citizens who form part of the state but from whom nothing is expected save obedience. This popular despotism is compatible with the exterior forms of liberty and can exist even in the shadow of the sovereignty of the people.

In a democracy it is only by association, De Tocqueville

<sup>6</sup> DeTocqueville, *Démocratie en Amérique*, tome III, p. 418.

<sup>7</sup> *Ibid.*, tome III, p. 490.

reasoned, that citizens can resist central power. But the principle of association was suspected both by the people and by the government. The power and duration of small, private societies astonished and disturbed the people: "All these associations which are born in our day are, moreover, so many new persons of which time has not sanctioned the rights and which enter the world at an epoch when the idea of private rights is feeble and when social power is without limits; it is not surprising that they should lose their liberty on being born."<sup>8</sup> So that over against isolated individuals one found only strong, centralized and paternalistic power. It is precisely what Rousseau had wished to see.

The problem now becomes increasingly clear: "How to resist tyranny in a country where each individual is feeble and where individuals are not united by any common interests?"<sup>9</sup> The solution is to be sought in an organization of social forces capable of resisting despotism, not unlike what was found in the aristocracy of the ancient régime. "Almost all peoples who have acted with vigor upon the earth, who have conceived, followed and executed grand designs, from the Romans to the English, were directed by an aristocracy, and wherein is that astonishing? That which is the most fixed in its views is aristocracy. The mass of the people can be led away by its ignorance or its passions; one can surprise the spirit of a king and make him vacillate in his projects; moreover a king is not immortal. But a body of aristocracy is too numerous to be won over, too few to cede easily to the intoxication of unreflected passions. A body of aristocracy is a man firm and enlightened who never dies."<sup>10</sup> "I shall not speak of the prerogatives of the nobility, of the authority of sovereign courts, of the right of corporations, of the privileges of provinces which in deadening the blows of authority maintained the spirit of resistance in the nation."<sup>11</sup> The grave defect of the Revolution was its love of absolute

<sup>8</sup> DeTocqueville, *Démocratie en Amérique* tome III, p. 510.

<sup>9</sup> *Ibid.*, tome I, p. 159.

<sup>10</sup> *Ibid.*, tome I, pp. 105-106.

<sup>11</sup> *Ibid.*, tome II, p. 253.

equality and its hatred of every semblance of corporative society. "This particular form of tyranny that is called democratic despotism, of which the Middle Ages had no idea, is already familiar to them. No more hierarchy in society, no class demarcation, no fixed gradations: one people composed of individuals almost alike and entirely equal, that confused mass recognized as the sole, legitimate sovereign, but carefully deprived of all the faculties that could permit it to direct and even watch, itself, its own government."<sup>13</sup>

To De Tocqueville the Revolution had been negative; it had torn down but had not built up. In breaking to fragments the society of the ancient régime it had not taken the trouble to save from the wreckage what was valuable: "We have abandoned what the ancient state could present of good, without acquiring what the actual state could offer that is useful; we have destroyed an aristocratic society and we rest complacently in the midst of the *débris* of the ancient edifice and we seem to wish to remain here forever."<sup>13</sup> The part of sense, he advocated, would be to adopt what in the modern régime corresponded to the secondary powers of the ancient régime. It would be an artificial adaptation and a difficult one to make; but therein lay the only hope. Because it is impossible to reconcile political liberty with a pulverized society. Political institutions are related to the structure of society, and liberty cannot be found in a society polarized about the individual and the state. There must be created, De Tocqueville insisted, "*pouvoirs secondaires*" and free associations which can struggle against tyranny without destroying order. It is deliberative assemblies, powers local and secondary, and other counterweights which alone can balance central power. Rights that have been wrested from classes, corporations and men should have served to erect upon a base more democratic "*nouveaux pouvoirs secondaires*."<sup>14</sup>

It should be stated at once that De Tocqueville did not favor a reintroduction of classes and castes that the Revolution had

<sup>13</sup> De Tocqueville, *L'Ancien Régime*, (6me ed.), p. 240.

<sup>13</sup> De Tocqueville, *Démocratie en Amérique*, tome I, p. 15.

<sup>14</sup> *Ibid.*, tome III, p. 498.



destroyed. Feudality as such had its faults. "I firmly believe that it is not possible to found anew in the world an aristocracy; but I think that private citizens in associating can constitute beings very opulent, very influential, very strong—in a word *personnes aristocratiques*."<sup>15</sup> In that manner, he thought, could be obtained several of the advantages of aristocracy without its injustices and dangers. Such associations, he held, could not be swerved to suit one's pleasure or oppressed in the shadow, and they could defend the rights of individuals against the unreasonable demands of power and save common liberties. It is especially in democratic nations that such associations are essential. In aristocratic nations "*corps secondaires forment des associations naturelles qui arretent les abus de pouvoir*."<sup>16</sup> If in democratic countries individuals cannot create something resembling these, De Tocqueville reasoned, there can be no protection against tyranny. Therefore, to De Tocqueville, the right of association was almost as inalienable from its very nature as individual liberty.

Thus the problem of liberty resolves itself into the establishment of secondary powers. Under the ancient régime there was more liberty than there is today, De Tocqueville believed, but it was irregular and intermittent, limited, and did not furnish all citizens with the natural and necessary guarantees. But it was fecund. It conserved originality and cultivated grand and glorious virtues. By its fruits it was justified. Modern liberty fails because of isolation. There is no attachment to class, caste or family that in the ancient régime drew citizens together in common action. There is no linkage of individuals. It is necessary to devise something, therefore, which can replace the old nobility which was at once a center of common interest and a force to resist tyranny. There is but one way—that of association: "In place of entrusting to the sovereign all the administrative powers taken from corporations and nobles, one can commit a part to *corps secondaires* temporarily formed

<sup>15</sup> DeTocqueville, *Démocratie en Amérique*, tome III, pp. 529-30.

<sup>16</sup> *Ibid.*, tome II, pp. 38, 39.

from private citizens; in that manner the liberty of individuals shall be more sure without their equality being less."<sup>17</sup>

Political and administrative decentralization can be counted upon, therefore, in De Tocqueville's scheme, to break the force of despotism. America, he thought, had discovered the secret in associations, voluntary and permanent. No other country had made so much of the principle of association as America. In some states he found counties with elective, representative assemblies with the power of taxation. To him they were veritable legislatures. Local institutions, he pointed out, are useful to all peoples, but countries where the social state is democratic have a more real need of them than others. They are a guarantee against an excess of despotism; they temper the rigors of absolute power. Local liberties break administrative despotism.

Other bulwarks of liberty, according to De Tocqueville, are a free press and a judiciary power. Servitude cannot be complete if the press is free. To be sure, De Tocqueville qualifies his regard for a free press by saying that he loves it more for the evils it prevents than for the good it does. The judiciary, he thought, was always the protector of the oppressed. The force of the tribunals has always been the greatest guarantee of individual independence and especially in a democracy, for there the rights and interest of individuals are in peril if the judiciary is not strong.

But the state must not be weakened to the point of helplessness, De Tocqueville affirms. It is necessary and desirable that the central power be strong. It should not be rendered feeble or indolent, but only it must be prevented from abusing its force. It is necessary to fix limits to social power; they should be extensive but visible and immobile. Thus there is no tendency in De Tocqueville toward the disintegration of social power so often noted in atomic individualists. Nor is he socialistic. His individualism is "corporative"—a strong central power limited and checked by a distribution of authority among

<sup>17</sup> DeTocqueville, *Démocratie en Amérique*, tome III, pp. 528-29.

secondary bodies. It is administrative deconcentration and political decentralization.

Verily this is the gospel according to Montesquieu. De Tocqueville's angle of approach, namely, that the social state is the cause of the greater part of the laws, customs and ideas regulating the conduct of nations, is that of Montesquieu. The first chapter of *Démocratie en Amérique*, entitled "Exterior Configuration of North America" is suggestive of book xiv (on climate) of *L'Esprit des Lois*. De Tocqueville's observation that democracies tend toward equality coincides with that of Montesquieu: "the love of democracy is that of equality."<sup>18</sup> De Tocqueville's appreciation of aristocracy as a means of dividing power and as a consequent bulwark of liberty is a reflection of Montesquieu. The "*corps intermédiaires*" of the *Démocratie en Amérique* resemble the "*pouvoirs intermédiaires, subordonnés et dépendants*" and the "*canaux moyens par où coule la puissance*" of *L'Esprit des Lois*.<sup>19</sup> The end is the same in the thought of both writers, namely, to guard against the power of momentary and capricious will which is incompatible with stability and fundamental law. The ultimate purpose of both is to break the force of centralized authority. And the means in both cases is the same—by a disposition of things, ("*disposition des choses*,")<sup>20</sup> to cause an arrest of power by power. Certainly in both instances that "disposition of things" was interpreted to include a corporative structure upon which a division of authority might be based. It is extremely doubtful if the separation of powers bulked any larger in Montesquieu's thought than the disposition of things which would facilitate that division. And De Tocqueville followed closely in his steps.

From the point of view of the new doctrine of the state—founded in part on professional jurisdictions—the contribution of De Tocqueville is highly important. Such a state presupposes a society composed of groups juridically recognized and accorded a public or semi-public law status. Isolation can no longer

<sup>18</sup> Montesquieu, *L'Esprit des Lois*, bk. v, ch. 3.

<sup>19</sup> *Ibid.*, bk. ii, ch. 4.

<sup>20</sup> *Ibid.*, bk. xi, ch. 4.

exist; a new hierarchized society shall have come again. And it is precisely that type of society that De Tocqueville considered fit for political liberty. He reasoned thus: there was political liberty under the ancient régime; there is a tendency in democracies toward political despotism; the solution lies in the establishment of a social state more akin to that of the ancient régime, embodying its good features and discarding its bad ones. Upon a social structure of that kind, De Tocqueville was convinced, institutions of political liberty could be reared.

De Tocqueville's logic and even his expressions would lift his secondary bodies to a public law status. They would be depositories of power taken from instruments of public law under the ancient régime, notably the aristocracy. And even the corporations, whose powers would now descend to the new secondary bodies, had at times functions that implied what we should today call a status in public law. The *corps des métiers* of the time of Saint Louis performed the public duty of guarding the city by night. Sixty men each night, chosen by trades, assembled at the Châtelet to receive instructions and then repaired to their respective posts where they kept watch until the break of day. It was called the *guet des métiers*, and the trades were spoken of as owing the duty of watch. But De Tocqueville is explicit. He would decentralize and deconcentrate administration, using his secondary bodies as depositories of administrative power. Necessarily they would have to be instruments of public law. And it is this public law status of associations that differentiates the school of corporative individualism from the school of atomic individualism.

Thus, logically, it is not a far cry from De Tocqueville to administrative syndicalism. The basic doctrine of economic federalism is that professional groups should receive a public law status and a share in administration. Already the universities of France are what might be termed "secondary bodies" with an autonomy almost complete. The state has begun here a professional deconcentration that might be applied to other branches of administration such as post offices, railroads and public works in general. Let a group of *syndicats* be formed with

official recognition; let them be assigned certain administrative functions; let them be given a patrimony and be held to accountability. If that were accompanied by a territorial decentralization there might be revived a corporative society and local liberties that Montesquieu prized so highly. De Tocqueville sees the possibility. And perhaps syndicalists might be brought to accept the type of a state which he envisages. They represent a protest against centralized, unitary and authoritative political control. So does De Tocqueville. They see no remedy save destroying that which offends. De Tocqueville, better versed in history, points out that a corporative society can bear a strong government without fear, and that the way is not to destroy but to build up. A wise administrative syndicalism might render the syndicalists' protest without substantial foundation in fact.

## CONSTITUTIONAL LAW IN 1920-1921. I

### THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1920

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The work of the court last term is chiefly notable for its amplification of certain important results of the preceding term. Thus, the final objection to the validity of the Eighteenth Amendment was refuted; the last great question touching the meaning of the word "income" in the Sixteenth Amendment was answered; the emergency powers of government in war time were brought into contact with more usual sources of public authority—this in the rent law cases; and some minor phases of the problem of freedom of speech and press were disposed of. However, in two cases, both of much interest to the political scientist, somewhat novel questions of national power were raised; and in neither was a certainly final solution offered. Questions of state power were again of decidedly subordinate significance and interest.

#### A. QUESTIONS OF NATIONAL POWER

##### I. REGULATION OF SENATORIAL AND CONGRESSIONAL ELECTIONS.

One of the two cases referred to above as of special interest to the political scientist was that of *Newberry v. United States*,<sup>1</sup> in which the court set aside the conviction of Newberry, at present United States Senator from Michigan, and a hundred and thirty-four other defendants, for violation of section 8 of the federal Corrupt Practices Act of June 25, 1910. The act in question forbade any candidate for representative in congress or senator of the United States to give or cause to be given any sums in excess of certain designated amounts "in procuring his nomination and election." Five of the justices decided that the act, so far as it applied to the processes of nomination to office, exceeded the power of Congress in the year 1910, although Justice McKenna

<sup>1</sup> 256 U. S. —, decided May 2.

reserved the question of the power of Congress under the Seventeenth Amendment, which has since been added to the Constitution. The other four justices asserted the power of Congress to govern nominations to the House of Representatives and Senate in the way attempted by the act, but were for setting the conviction aside on account of reversible errors in the trial judge's charge to the jury.

Justice McReynolds, in what is rather misleadingly called the "opinion of the court," bases his argument against the act upon three propositions: First, that the only possible source of the power claimed for Congress is Article I, section 4;<sup>2</sup> second, that the power thus conferred is the power to regulate the "manner of holding elections," not the power to regulate elections generally; third, that "election" in the sense of the Constitution means simply "the final choice of an officer by the duly qualified electors"—a proposition which is based on a careful collation of the passages of the Constitution in which the term is employed. That Congress may pass all laws "necessary and proper" for carrying its power to regulate "the manner of holding elections" into execution, Justice McReynolds of course admits; and as an instance of such a law he points to the Act of February 14, 1899, directing that voting for members of Congress be by written or printed ballot or by voting machine.<sup>3</sup> But, he continues, even if it be "practically true that, under present conditions, a designated party candidate is necessary for an election—or preliminary thereto—nevertheless his selection is in no real sense part of the manner of holding election. This does not depend upon the scheme by which candidates are put forward. Whether the candidate be offered through primary, or convention, or petition, or request of a few, or as a result of his own unsupported ambition, does not directly affect the manner of holding elections. Birth must precede, but is no part of either funeral or apotheosis."

Refutation of Justice McReynolds was essayed by both the Chief Justice and by Justice Pitney, the latter speaking also for Justices Brandeis and Clarke. "Why," asks Justice Pitney, plunging to the heart of the issue, "should 'the manner of holding elections' be so nar-

<sup>2</sup> "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

<sup>3</sup> For cases involving similar legislation, see *Ex parte Siebold*, 100 U. S. 371; *ex parte Clarke*, 100 U. S. 399; *ex parte Yarborough*, 110 U. S. 651; *re Coy*, 127 U. S. 731; *United States v. Mosley*, 238 U. S. 383.



rowly construed?" It relates, he contends, not to a single isolated event, but to "a complex process," nothing less, indeed, "than the entire mode of procedure" by which the popular choice is finally arrived at—all of which is valid reasoning enough, even if not entirely persuasive. But a little later he shifts his position and, assuming the very point to be proved, namely, that Congress has the power to regulate elections generally, proceeds to argue that in view of their vital connection today, elections even in the sense of "the single and definitive step described as an election at the time" the Constitution was adopted, cannot be effectively regulated independently of the processes of nomination to offices, wherefore, under the "necessary and proper" clause taken in connection with Article I, section 4, Congress may as to senators and representatives regulate both.

This clearly begs the question. The defect, however, is remedied when, passing from Article I, section 4, he invokes the much broader power of the national government "to legislate through a Congress consisting of a Senate and House of Representatives chosen by the people, —in short, the power to maintain a law-making body representative in its character." He continues as follows: "The passage of the Act under consideration amounts to a determination by the law-making body that the regulation of primary elections and nominating conventions is necessary if the Senate and House of Representatives are to be, in a full and proper sense, representative of the people." In other words, he finally bases his case—and the same is true of Chief Justice White—upon what may be called the self-preservative powers of the government, although in this connection too he relies in part on the "necessary and proper" clause, remarking: "It would be tragic if that provision of the Constitution which has proved the sure defense of every outpost of national power should fail to safeguard the very foundation of the citadel."<sup>4</sup>

<sup>4</sup>It may be argued perhaps, that the specific delegation of power made by Article I, section 4, precludes the assumption of a broader power inherent in the national government. But the answer is that, in form, Article I, section 4, is primarily a delegation of power, not to Congress, but to the states; and as both Chief Justice White and Justice Pitney point out, if Congress can not regulate the nomination and election of senators under Article I, section 4, then, of course, neither can the states. Nor, Justice Pitney continues, can the states claim such power to be among their reserved powers. "The election of senators and representatives in Congress is a federal function; whatever the states do in the matter they do under authority derived from the Constitution of the United States. The reservation contained in the Tenth

Altogether, the merits of the question are somewhat divided. In his reading of Article I, section 4, Justice McReynolds remains unanswered and probably unanswerable. But his assumption that this is the exclusive basis of the power of Congress to enact laws touching the choice of senators and representatives seems untenable. The national government is after all the national government, with all that that imports; it is a government of the people, and it has the power to safeguard the purity of the wellsprings of its authority. It would be strange indeed if the government which is vested with the duty of guaranteeing a republican form of government to the states could not adopt the measures which are necessary to guarantee itself the same kind of government.<sup>5</sup>

## II. THE FEDERAL FARM LOAN ACT

There is an old saying about "the tail wagging the dog." It is well illustrated in the result arrived at in *Smith v. the Kansas City Title and Trust Company*,<sup>6</sup> in which was sustained an act of Congress establishing

Amendment cannot properly operate upon this subject in favor of the state governments; they could not reserve power over a matter that had no previous existence; hence, if the power was not delegated to the United States, it must be deemed to have been reserved to the people, and would require a constitutional amendment to bring it into play,—a deplorable result of strict construction." Justice McReynolds, on the other hand, emphasizes the numerous points of contact of the national with the state government and the frequent dependence of the former upon the latter. But by way of comment, it should be pointed out that wherever this dependence exists it is specifically provided for by the Constitution. Chief Justice White seems to argue in one place that even if the act of 1910 was invalid when enacted, the defect had been cured by the subsequent adoption of the Seventeenth Amendment; but a careful examination of his language makes it probable that he was arguing only that the amendment should be regarded as interpretative of the original Constitution. The precise effect of the decision in the case at bar on the Corrupt Practices Act remains a matter of some doubt, especially in view of Justice McKenna's isolated position. It should be carefully noted, however, that the underlying principle of Justice McReynolds' opinion withholds from Congress not simply the right to govern nominations to the office of senator or representative in Congress, but all power concerning any of the preliminaries of the single definitive act of their election.

<sup>5</sup> Art. IV, sec. 4: "The United States shall guarantee to every State in this Union a republican form of government," etc.

<sup>6</sup> 255 U. S. 180. The case has some of the earmarks of a moot case, and Justice Holmes, in a dissenting opinion, in which Justice McReynolds concurred, contended that it was not one "arising under the Constitution or laws of the United States," within the meaning of section 24 of the Judicial Code, under which the

a system of banks for the purpose of loaning money to farmers on special terms and exempting them from taxation, federal, state, and municipal. One hundred years ago it was ruled in the famous case of *McCulloch v. Maryland* that the national government could incorporate a bank to act as its fiscal agent and exempt it from taxation, even though the capital stock of such bank was largely owned by private persons and its principal business was that of private banking; and this ruling was later availed of to justify the establishment of the national banking system, which quite recently was reorganized under the Federal Reserve Act of 1913. It was, however, alleged against the Federal Farm Loan Act, that far from establishing a fiscal agent for the government, with the functions of a private bank incidentally attached thereto, it did exactly the reverse. The court held, none the less, "that the creation of these banks and the grant of authority to them to act for the government as depositories of public moneys and purchasers of government bonds, brings them within the creative power of Congress, although they may (*sic*) be intended, in connection with other privileges and duties, to facilitate the making of loans upon farm security at low rates of interest."

The decision is beneficial, but rather insecurely grounded. The use made of the farm loan banks as fiscal agents of the national government is an obvious pretext, insufficient to hoodwink the fondest complacency. Nor is the court's answer that, "when Congress acts within the limits of its constitutional authority, it is not the province of the judicial branch of the government to question its motives," more than a technical evasion, since the question is whether Congress was acting within the limits of its constitutional authority. And in this connection we are reminded that in the very act of sustaining the national authority in *McCulloch v. Maryland*, Marshall gave warning that, "should Congress . . . . under the pretext of executing this power, pass laws for the accomplishment of objects not intrusted to the government, it would become the painful duty of this tribunal . . . . to say that such an act was not the law of the land."

The court might have taken a somewhat broader view of the question raised by the Farm Loan Act. It might have considered the act, not

appeal was taken. Justice Day, speaking for the majority, answered with Marshall's definition of this phrase in *Cohens v. Virginia*, 6 Wheat. 264, 379: "A case . . . . may truly be said to arise under the Constitution or a law of the United States whenever its correct decision depends upon a construction of either." Justice Brandeis took no part in the consideration of the case.

in relation to the needs of the government but rather in relation to its duty, to wit, that of making a beneficial exercise of its powers. Through the federal reserve system, the constitutionality of which none has challenged, the government is custodian today of a vast proportion of the credit of the country. Is it not, then, vested with the duty of making credit available on reasonable terms to meet the widespread interests of the people of the United States? In other words, the government is vested by the Constitution with the power of taxation, the power to coin money, the borrowing power, etc., and as a means "necessary and proper" for carrying these powers into execution it has chartered banks and organized them into a system which largely controls the indispensable service of affording credit to the community. Certainly, then, it may take the further step and provide agencies for the proper discharge of this office. In *First National Bank v. Fellows*<sup>7</sup> it was held that Congress could authorize national banks to exercise the powers of trust companies, that service today being a usual one for banks to perform. Similarly, the federal farm loan banks are to be regarded as constitutional, not because they are themselves fiscal agents of the national government, but because they are part and parcel of the national banking system as a whole, and enable it to perform the service which modern conditions require that it should perform.

But indeed the decision might have been placed on an even broader basis, that namely of the power of Congress to raise revenue to provide for the "general welfare." For if Congress can appropriate money for child welfare work, as by the recent Sheppard-Towner Act, what is to hinder it from loaning money for agricultural purposes; and if it can do that, why may it not, under the "necessary and proper" clause, create a system of banks as a convenient agency for this work?<sup>8</sup> Apparently, however, the court did not like to face the socialistic implications of such reasoning, and so it took the more roundabout route.<sup>9</sup>

<sup>7</sup> 244 U. S. 416.

<sup>8</sup> Mr. Hughes' brief in the case follows this general line of reasoning. As a matter of fact, the recent extension of life granted to the War Finance Corporation, for the purpose of making agricultural loans, can rest on no other foundation. That Congress is not confined in making appropriations to "cases falling within the specific powers enumerated in the Constitution" was recognized by Story (*Commentaries*, sec. 991). The expansion of the field within which congressional appropriations occur is sketched by H. L. West, in his *Federal Power, Its Growth and Necessity*, pp. 97-113.

<sup>9</sup> Another case involving Congress' fiscal powers was that of *Baender v. Barnett*, 255 U. S. 224, in which it was argued for plaintiff in error that Article I,

## III. INCOME TAXATION

1. *Taxation of Gains from Sales of Property*

The Sixteenth Amendment received additional elucidation of an important character in a series of cases headed by *Merchants Loan and Trust Company v. Smietanka*.<sup>10</sup> The great question at issue in all these cases was whether the gains from a single isolated sale of personal property which has appreciated in value through a series of years but subsequently to the going into effect of the Sixteenth Amendment on March 1, 1913, is "income" within the meaning of the amendment. Thus in the case just mentioned, one Ryerson had died in 1912, leaving certain shares of stock which on March 1, 1913, were worth some \$500,000, and which were sold early in 1917 at an advance of more than \$700,000. Was the latter sum properly to be treated as "income" for the year 1917? That the act of Congress so regarded it was plain; but was the act of Congress in that respect constitutional?

The court held that it was. To the argument that such a gain was really an accretion of property, Justice Clark, speaking for the majority, responded with the definition of income which had been arrived at earlier by the court in the interpretation of the Corporation Excise Tax Act of 1909,<sup>11</sup> which had been summed up by Justice Pitney in *Eisner v. Macomber*, in the following words: "Income may be defined as the gain derived from capital, from labor, or from both combined, provided it be understood to include profits gained through the sale or conversion of capital assets."<sup>12</sup> Nor would the court admit that the gain from capital realized by "a single sale of property," as in the case before it, was essentially different from the gains "realized from sales by one engaged in buying and selling as a business," for instance, a merchant, a real estate agent, or broker. The distinction, said Justice Clarke, was "interesting and ingenious," but the argument in its support "fails to

section 8, clause 6 of the Constitution, authorizing Congress "to provide for the punishment of counterfeiting the securities and current coin of the United States" was a limitation as well as a grant of power. The argument was easily disposed of by the case of *United States v. Marigold*, 9 How. 560.

<sup>10</sup> 255 U. S. 509.

<sup>11</sup> See *Straton's Independence v. Howbert*, 231 U. S.; *Hays v. Ganley Mountain Coal Co.*, 247 U. S. 189; *United States v. Cleveland, C. C. and St. L. R. Co.* 247 U. S. 195.

<sup>12</sup> 252 U. S. 189, 207. For a review of *Eisner v. Macomber*, see this *Review* for November, 1920 (Vol. 14, pp. 635-41).

convince us that a construction should be adopted which would, in a large measure, defeat the purpose of the Amendment."

Unquestionably the court has avoided an alluring pitfall. For what it was invited to do was really to contract the definition of income as "gains" to a definition of income as "earnings," which would have brought about again very much the situation which the Sixteenth Amendment was designed to correct. Yet it must in candor be admitted that the court's achievement reposes rather upon its official authority than upon its logic, which for the most part consists simply in crying down "the refinements of lexicographers or economists" and crying up "the common understanding" of the term income. But it is submitted that if anything is not income in the common understanding, it is an increase in the value of property, albeit reduced to monetary terms by the sale of the property, which has accrued through a series of years, albeit subsequent to March 1, 1913. The very essence of the common understanding of income is that it is of current or very recent origin; and when it is of recent origin it does not have to be reduced to terms of money to become income. A sale is no miraculous process whereby to convert capital into income, as people who have to sell their furniture to keep the larder stocked are well aware.

Furthermore, it is difficult to see just how, in a case of conversion of capital, the idea so insisted upon by Justice Pitney in *Eisner v. Macomber* as "fundamental" to the conception of income underlying the Sixteenth Amendment, has any operation at all. This was, it will be recalled, that "income" must be "dissevered" from its "source." But how, or in what sense, is the gain derived from a sale of property "dissevered" from the rest of the price—unless perhaps that part of the price was paid in marked dollars?<sup>13</sup> It ought to be noted, too, in passing, that precedents dealing with the respective rights of life-tenants and remaindermen in gains derived from invested capital,<sup>14</sup> though they were relied upon in part by Justice Pitney in his opinion, are now dismissed by Justice Clarke as of little value in determining questions arising under the Sixteenth Amendment.

<sup>13</sup> For, as was just said, sale does not convert "capital" into "income." The same question also arises, from another angle, if the income is the reward of labor. Can the Sixteenth Amendment be really considered as requiring that "income" be "dissevered" from the labor that produced it; and if so, in what sense?

<sup>14</sup> See the *Review*, Vol. 14, p. 640, note.

Nevertheless, in *Walsh v. Brewster*,<sup>15</sup> decided at the same sitting with the *Smietanka* case, the decision in the latter and that in the *Macomber* case are lined up side by side without the breath of a hint that they may be in any way incompatible. But the *Brewster* case has also an independent interest, since it challenges the sacrosanctity, in certain situations, of the previously inviolate date of March 1, 1913, as that from which all taxable gains are to be reckoned. The facts of the case were as follows: Certain bonds were purchased in 1909 for \$191,000 and sold in 1916 for the same amount, after having stood on March 1, 1913, at \$151,845. The question arose whether the vendor, who was the original investor, was taxable under the Sixteenth Amendment on the difference, namely \$39,155, that being the gain which had accrued to him since March, 1913. The court held, however, with the acquiescence of the government, that an income must be a true gain on the part of the investor, and that no such gain was realized by the sale in question. The query suggests itself, whether the obverse of this rule would apply. Thus suppose the bonds in question had been bought and sold at the lower figure, but had stood on the intervening March 1, 1913, at the higher figure; should the vendor be allowed to reckon the difference as a deductible loss for the year 1916? Certainly, by the logic of *Walsh v. Brewster*, he should not.

## 2. *Excess Profits and Estate Taxes*

It was the purpose of the excess profits tax clause of the Revenue Act of October 3, 1917, to lay a special tax upon the incomes of trades and businesses exceeding what was deemed a normally reasonable return upon the capital actually invested. But how was the capital "actually invested" to be ascertained? In general, the test imposed by the act was the actual cost of the property, a test which, in view of the general advance in values during the war worked considerable hardship to investments antedating the period of inflation. Nevertheless, in *La Belle Iron Works v. United States*,<sup>16</sup> the act was upheld in this respect against the charge that it violated both the "due process of law" clause of the Fifth Amendment and the "uniformity" clause of Article I, section 8.<sup>17</sup> The latter, the court pointed out, requires only territorial

<sup>15</sup> 255 U. S. 489; see also *Goodrich v. Edwards*, *ibid.*, p. 527.

<sup>16</sup> 256 U. S. —, decided May 16.

<sup>17</sup> "All duties, imposts, and excises shall be uniform throughout the United States."

uniformity.<sup>18</sup> The other objection it answered as follows: "The difficulty of adjusting any system of taxation so as to render it precisely equal in its bearings is proverbial, and such nicety is not even required of the states under the 'equal protection' clause [of the Fourteenth Amendment], much less of Congress under the more general requirements of due process in taxation."

In *New York Trust Company v. Eisner*,<sup>19</sup> the estate tax levied by the act of September 8, 1918, was assailed as unconstitutional. Plaintiffs in error admitted that the case of *Knowlton v. Moore*<sup>20</sup> established the right of the national government to levy a tax on legacies, and that such a tax was an excise. But, they said, whereas a legacy tax is on the right of the legatee to take, the estate tax is on a transfer of property while it is still being effectuated by the state and so both an intrusion by the national government upon state processes, and a tax on the "unalienable" right of ownership and so a "direct" tax. Notwithstanding the support it received from Justice White's opinion in the *Knowlton* case, the argument was brushed aside by Justice Holmes with the pertinent remark that in this matter of taxation "a page of history is worth a volume of logic." In short, the estate tax is constitutional; and furthermore, state inheritance and succession taxes are not deductible from the value of the gross assets when determining the net assets upon which it may be reckoned. On the other hand, by another case,<sup>21</sup> the amount of the federal estate tax is deductible from the gross income of a testator's estate for the purpose of the income tax imposed by the Act of February 24, 1919.

#### IV. FREEDOM OF PRESS AND THE POSTMASTER GENERAL

The question of constitutional freedom of speech and press was again before the court in two cases, that of *Gilbert v. Minnesota*, which is mentioned later in connection with questions of state power, and that of *United States, ex rel. Milwaukee Social Democratic Publishing Company*

<sup>18</sup> The court, therefore, assumes that the excess profits tax is an impost or excise, that is, an indirect tax; and this probably involves a similar assumption as to income taxes, since the excess profits tax is, in form certainly, an income tax. Apparently, therefore, the court still adheres to *Brushaber v. Union P. R. Co.*, 240 U. S. 1, notwithstanding some implications to the contrary in Justice Pitney's opinion in *Eisner v. Macomber*.

<sup>19</sup> 256 U. S. —, decided May 16.

<sup>20</sup> 178 U. S. 41.

<sup>21</sup> *United States v. Woodward*, 256 U. S. —, decided June 6.



v. A. L. Burleson, Postmaster General,<sup>22</sup> which dealt with the power of the postmaster general under the acts of Congress and the Constitution in revoking second-class mail privileges. The case turned in the first instance on the construction to be given to the act of March 3, 1879, which provides "that the conditions upon which a publication shall be admitted to the second class are as follows: First, it must regularly be issued at set intervals, as frequently as four times a year," etc. In a letter to Senator Bankhead, dated August 22, 1917, Postmaster General Burleson declared that, "for many years this Department has held publications not to be 'regularly issued' in contemplation of the law when any issue contained non-mailable matter," and it is apparently on this theory that a month later the department revoked the second-class privilege of the *Milwaukee Leader* for carrying matter alleged to be "non-mailable" under title 12 of the Espionage Act. In other words, by treating the term "non-mailable" as used in the act passed in 1917, as an equivalent of the phrase "not regularly issued" in the sense of the act of 1879, the postmaster general conferred upon himself, tentatively, the power to revoke the *Leader's* second-class privilege—a privilege indispensable to profitable publication—for an indefinite future, whereas if he had acted under the Espionage Act alone, his only power would have been to exclude from the mails altogether such issues of the *Leader* as from time to time he might have found to be "non-mailable" because containing matter forbidden by the act.

Did Congress ever intend that these two statutes should be thus brought into juxtaposition? Though the court apparently so held, since it sustained the postmaster general's order,<sup>23</sup> it is difficult not to agree with Justice Brandeis, in his dissenting opinion, that "the fact that material appearing in the newspaper is non-mailable under wholly different provisions of the law can have no effect upon whether or not the publication is a newspaper"—which is all that the act of 1879 had in contemplation. When, however, Justice Brandeis goes on to argue that the construction of the law impliedly ratified by the court raises grave constitutional questions, he is on less secure ground. It may be, at least it is not denied by the court, both that the right of circulation is an essential element of the right of publication, and so of freedom of the

<sup>22</sup> 255 U. S. 407.

<sup>23</sup> The court does speak of "its [Congress'] practically plenary power over the mails," but the cases which it cites in this connection by no means establish an arbitrary authority in this field: *Ex parte Jackson*, 96 U. S. 727; *Public Clearing House v. Coyne*, 194 U. S. 497; *Lewis Publishing Co. v. Morgan*, 229 U. S. 288.

press, and that the second-class privilege is for newspapers an essential part of the right of circulation. But it is equally true that where the right of publication does not exist, then neither does the right of circulation; and the right of circulation does not exist, on the clearest principles, for matter designed "to create hostility and to encourage violation of the law," which is just the kind of matter the *Leader* is alleged to have contained.

The constitutional issue thus boils down to the question whether relator was deprived of its rights "without due process of law," and this raises the question whether the postmaster general's order was punitive in nature, as Justice Brandeis says, or only a fair measure of administration. On this point Justice Clarke remarks with force, that it was "not possible for the United States to maintain a reader in every newspaper office of the country to approve in advance each issue before it should be allowed to enter the mails," and that "when, for more than five months, a paper had contained, almost daily, articles which under the express terms of the statute, render it 'non-mailable' it was reasonable to conclude that it would continue its disloyal publications." Besides, as Justice Clarke points out, it was always "open to relator to mend its ways . . . and then to apply anew for the second-class privilege."

For the rest, the postmaster general's action was attended by due notice to relator, which was given the right to a hearing, and was followed by a review of the facts by a court for the purpose of determining their sufficiency to support the order based upon them. That, however, the decision enlarges greatly the postmaster general's power in respect to "non-mailable" matter is obvious, and this is a change in the law which the court might well have left to Congress, and probably would have, had it not feared to expose Mr. Burleson, about to quit office, to vexatious prosecutions.

#### V. POLICE POWER IN THE DISTRICT OF COLUMBIA

During the emergency of the war, Congress enacted a statute, to run for two years, which gave existing tenants in the District of Columbia the right to continue in occupancy of their dwelling places at their own option, provided only that they paid rent and performed other conditions as already fixed by lease, or as required by the commission created by the act. In *Block v. Hirsh*<sup>24</sup> the validity of this statute, which was

<sup>24</sup> 256 U. S. —, decided April 18.

enacted by virtue of the power of Congress over the District of Columbia, was assailed as contravening the "due process of law" clause of the Fifth Amendment, while in *Brown Holding Company v. Feldman*,<sup>25</sup> which was decided the same day, a similar enactment by the New York legislature for the city of New York was challenged under the "due process of law" clause of the Fourteenth Amendment.

Speaking of the congressional act, Justice Holmes, for the majority of the court, said: "The general proposition to be maintained is that circumstances have clothed the letting of buildings in the District of Columbia with a public interest so great as to justify regulation by law . . . . The space in Washington is nearly monopolized in comparatively few hands and letting portions of it is as much a business as another. Housing is a necessary of life. All the elements of public interest justifying some degree of public control are present. The only matter that seems to us open to debate is whether the statute goes too far. For just as there comes a point at which the police power ceases and leaves only that of eminent domain, it may be conceded that regulations of the present sort, pressed to a certain height, might amount to a taking without due process of law. . . . The regulation is put and justified as a temporary measure."<sup>26</sup> . . . . A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change. Machinery is provided to secure the landlord a reasonable rent," and to deprive him "of the power of profiting by the sudden influx of people to Washington, caused by the needs of government and the war, and thus of a right usually incident to fortunately situated property. . . . But while it is unjust to pursue such profits with sweeping denunciations the policy of restricting them has been embodied in taxation and has been accepted. It goes little further than the restriction put upon the rights of the owner of money by the more debatable usury laws. The preference given to the tenant is almost a necessary incident of the policy and is traditional in English law. If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail."

Four dissentients, including the late Chief Justice, spoke through Justice McKenna, who took for his text that "maxim of experience" "withstand beginnings."<sup>27</sup> The fact is interesting, since Justice

<sup>25</sup> 256 U. S.—, decided April 18.

<sup>26</sup> Citing *Wilson v. New*, 243 U. S. 332; and *Ft. Smith and W. R. Co. v. Mills*, 253 U. S. 206.

<sup>27</sup> Citing *Boyd v. United States*, 116 U. S. 616.

McKenna himself spoke for the court in the German Alliance Insurance Case,<sup>28</sup> which furnished the majority with its leading precedent on this occasion. But, Justice McKenna rejoins, "the difference is palpable between regulation of life insurance rates, and "the exemption of a lessee from the covenants of his lease in defiance of the rights of the lessor;" and of the earlier cases generally he contends that they only "justify the prohibition of the use of property to the injury of others," while the statute under review aims to "transfer the uses of the property of one and vest them in another." Nor is the statute to be vindicated as a temporary measure to meet emergency. "No doctrine," says he, quoting from *Ex parte Milligan*,<sup>29</sup> "involving more pernicious consequences was ever invented by the wit of man than that any of its [the Constitution's] provisions can be suspended during any of the great exigencies of government;" and he later adds on his own account that, if a power exists in government at all, "it is perennial and universal, and can give such duration as it pleases to its exercise, whether for two years or for more than two years."

It is impossible not to sympathize a good deal with Justice McKenna in his dismay, though he has hardly defined the problem. Certainly the principle that most private rights must ultimately yield to urgent public interest is not advantageously to be assailed; but we can insist that the full constitutional machinery for ascertaining whether such measure of public interest exists be kept efficiently functioning. Indeed, we can do more, and protest against the too careless embodiment in our constitutional jurisprudence of the assumption that because government has the power to meet emergencies, anything which it may do to that end is necessarily constitutional.<sup>30</sup> Whether Justice Holmes' opinion in the present case really affords the court any foothold against less well justified legislative declarations of emergency, time alone can disclose.

#### VI. NATIONAL PROTECTION OF CIVIL RIGHTS

Perhaps the most interesting case of the term from the point of view of constitutional theory was that of *United States v. Wheeler*,<sup>31</sup> which grew out of the Bisbee deportations of 1919. Wheeler and others,

<sup>28</sup> *German Alliance Ins. Co. v. Lewis*, 233 U. S. 389.

<sup>29</sup> 4 Wall. 2.

<sup>30</sup> This seems to be an assumption underlying the decision in *Wilson v. New*, 243 U. S. 332.

<sup>31</sup> 254 U. S. 281.

who were active in this affair, were indicted under section 19 of the United States Criminal Code for conspiracy to injure and oppress certain citizens of the United States residing in Arizona in the exercise of rights and privileges secured them by the Constitution and laws of the United States, especially the right and privilege to reside peaceably therein and to be immune from unlawful deportation from that state to another. The Government relied in part upon Article IV, section 2 of the Constitution,<sup>22</sup> whereby, it is claimed, "the right of a citizen of one of the states to free ingress and regress to and from another state . . . is secured in some sense," but more especially upon *Crandall v. Nevada*,<sup>23</sup> in which the court had set aside many years ago a state law on the ground that it interfered with the right of a citizen of the United States to pass freely from a state for the purpose of exercising the rights and duties accruing to him from the Constitution and laws of the United States and the existence of the national government. A salient passage of the government's argument reads as follows:

"The existence of the states prevents a citizen of the United States from deriving, as such, a right under the Constitution to territorial mobility within the limits of any particular state. To that extent he is dependent upon the laws and agencies of the several States. The right, however, to move freely, *suo intuitu*, from one State into another is an entirely different matter and brings into the problem the concept of the Union. It is a right necessarily inherent in federal citizenship and secured, therefore, by the Constitution. Unless this be true, no Union was in fact established in 1789, because no less than this can be properly attributed to citizenship of the United States."

And furthermore, it continued:

"The injury done by the defendants in this case has a double aspect, one toward the individuals deported and the other toward the State into which they were deported. By their deportation the individuals became, or might become, a charge upon the State of New Mexico, a disturbance of its peace, or an offense to its own state policy. According to the decisions of this court, and especially *Kansas v. Colorado* and *Missouri v. Illinois*,<sup>24</sup> the offended state was secured by the Constitution

<sup>22</sup> "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

<sup>23</sup> 6 Wall. 35.

<sup>24</sup> 185 U. S. 125, and 206 U. S. 46. See also *Georgia v. Tenn. Copper Co.*, 206 U. S. 230.

a right to sue the offending State in the federal courts, and to have applied there, not the law of the offending State, but a general or international law. Is not this a strong reason for believing that the Constitution also secured a right to the individuals, not as citizens of Arizona but as citizens of the United States, to have their cases determined in a federal court by federal law?"

Finally, alluding to Justice Miller's famous phrase in the *Neagle Case*, it was argued that the deportees came within the protection of "the peace of the United States."<sup>35</sup>

The court, speaking through the Chief Justice, sustained the lower court in quashing the indictment of Wheeler and his associates. Following the distinction developed in the *Slaughter House Cases*<sup>36</sup> between the rights of state citizenship and those of national citizenship, it classified the right invoked in this case as belonging to the former category, and pointed out that it was protected by Article IV, section 2, only against discriminatory action by the states themselves, not against individual action; nor, it was asserted, did *Crandall v. Nevada*, rightly interpreted, militate against this view in any way.<sup>37</sup> The *Neagle case* and the trespass suffered by the state into which the deportation took place were passed over in silence.

Although the decision unquestionably follows conventional lines,<sup>38</sup> it leaves one not entirely satisfied. Perhaps the time will come when, with the spread of the Ku Klux Klan or some equally egregious form

<sup>35</sup> 135 U. S. 1, 69.

<sup>36</sup> 16 Wall. 36.

<sup>37</sup> The words of the Chief Justice are: "*Crandall v. Nevada* . . . so much relied upon in the argument, is inapplicable, not only because it involved the validity of state action, but because the state statute considered in that case was held to directly burden the performance by the United States of its governmental functions and also to limit rights of the citizens growing out of such functions; and hence it also follows that the observation made in *Twining v. New Jersey*, 211 U. S. 78, 97, to the effect that it had been held in the *Crandall Case* that the privilege of passing from state to state is an attribute of national citizenship, may here be put out of view as inapposite." He then appropriately adds: "With the object of confining our decision to the case before us, we say that nothing we have stated must be considered as implying a want of power in the United States to restrain acts which, although involving ingress or egress into or from a state, have for their direct and necessary effect an interference with the performance of duties which it is incumbent upon the United States to discharge."

<sup>38</sup> In addition to the cases cited above, see *Paul v. Virginia*, 8 Wall. 168; *Ward v. Maryland*, 12 Wall. 418; *United States v. Cruikshank*, 92 U. S. 542; *United States v. Harris*, 106 U. S. 629; and the *Civil Rights Cases*, 109 U. S. 3.

of *imperium in imperio*, it will become necessary to discard the outworn artificiality of the decisions in the Slaughter House and Civil Rights Cases. Certainly it is rather dismaying to be told in one breath that national citizenship is "paramount and dominant" and in the next that all our most fundamental rights come from the states and are dependent on them for protection.

#### VII. THE CONSTITUTION—AMENDING POWER

The cases decided last term still left one objection to the validity of the Eighteenth Amendment unanswered, that which was based on the fact that in proposing the amendment Congress had stipulated that ratification to be operative must take place within seven years. In *Dillon v. Gloss*<sup>29</sup> this objection is disposed of in the interesting and convincing opinion of Justice Van Devanter. "That the Constitution contains no express provision on the subject," runs the opinion, "is not in itself controlling; for with the Constitution, as with a statute or other written instrument, what is reasonably implied is as much a part of it as what is expressed. . . ."

"We do not find anything in the Article which suggests that an amendment, once proposed, is to be open to ratification for all time, or that ratification in some of the states may be separated from that in others by many years and yet be effective. We do find that which strongly suggests the contrary. First, proposal and ratification are not treated as unrelated acts, but as succeeding steps in a single endeavor, the natural inference being that they are not to be widely separated in time. Secondly, it is only when there is deemed to be a necessity therefor that amendments are to be proposed, the reasonable implication being that when proposed they are to be considered and disposed of presently. Thirdly, as ratification is but the expression of the approbation of the people and is to be effective when had in three-fourths of the states, there is a fair implication that it must be sufficiently contemporaneous in that number of states to reflect the will of the people in all sections of relatively the same period, which, of course, ratification scattered through a long series of years would not do."

Furthermore, there is the general character of the Constitution as a whole: ". . . . As a rule the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require; and Article 5 is no

<sup>29</sup> 256 U. S. —, decided May 16.

exception to the rule." "Of the power of Congress, keeping within reasonable limits, to fix a definite period for the ratification we entertain no doubt."<sup>40</sup>

#### VIII. FEDERAL JUDICIAL POWERS AND THE SUABILITY OF STATES

Ex parte, in the matter of the state of New York<sup>41</sup> involved the question of the right of a district court of the United States to entertain, by virtue of its admiralty and maritime jurisdiction, an action *in rem* against certain tugs which had been chartered by the superintendent of public works of the state of New York, and which had been libelled for damages done their tows. The court held that since, under the Eleventh Amendment, an action *in personam* would not lie against the superintendent of public works, his liability in the premises being clearly official and not personal,<sup>42</sup> the action *in rem* would not lie either. In a second case of the same title it was further determined that a vessel, the property of a state and employed in public governmental service, is exempt from seizure by admiralty process *in rem*.<sup>43</sup> The two cases

<sup>40</sup> For the present writer's review of *Hawke v. Smith*, 253 U. S. 221, and *Rhode Island v. Palmer*, *ibid.*, 350, in which important questions as to the validity and construction of the Eighteenth Amendment were dealt with, see the *Review* for November, 1920 (Vol. 14, pp. 648-54). It should be added that the report of the latter case, as it appears in the bound volume, contains a dissenting opinion by Justice Clarke which was not available when the review cited was prepared. Justice Clarke accepts the first seven and the tenth paragraph of the announced "Conclusions" of the court, but demurs to the eighth, ninth, and eleventh, that, taken together, they, "in effect, declare the Volstead Act . . . to be supreme law of the land,—paramount to any state law with which it may conflict." His own view of the word "concurrent" of the amendment is that it means "joint and equal authority," the view also taken by Justice McKenna, it will be recalled, in his dissenting opinion. Furthermore, Justice Clarke holds that Congress derives no authority from the second section of the amendment to treat as intoxicating liquor which is "expressly admitted" by the court "not to be intoxicating." In this respect its power has not the scope either of the war powers of the national government or of the police powers of the states.

<sup>41</sup> 256 U. S. —, decided June 1.

<sup>42</sup> Citing *Beers v. Arkansas*, 20 How. 527; *Hans v. Louisiana*, 134 U. S. 1; *Fitts v. McGhee*, 172 U. S. 516; *Palmer v. Ohio*, 248 U. S. 32; *Dubine v. New Jersey*, 251 U. S. 311.

<sup>43</sup> *Ibid.* The immunity extended by the Eleventh Amendment "even in the case of municipal corporations" to "property and revenue necessary for the exercise" of the powers of government is regarded by Justice Pitney as analogous, citing *Klein v. New Orleans*, 99 U. S. 149.

He also suggests that the immunity from jurisdiction of public vessels, which is recognized by international law, might furnish a principle applicable to the



therefore illustrate the proposition, which falls in the line of familiar doctrine, that the admiralty and maritime jurisdiction of the federal courts is limited by the Eleventh Amendment.

The original jurisdiction of the Supreme Court, however, over controversies between states is not so limited. In *New York v. New Jersey*,<sup>44</sup> accordingly, the court sustained the right of the former state to maintain an original suit against the latter, to enjoin it from discharging sewage into the waters of upper New York Bay, but finally refused the injunction asked for, on the ground that the threatened invasion of New York's rights had not been established by clear and convincing evidence. The suit was, therefore, dismissed, but without prejudice to a renewal of the application "in conditions which the state of New York may be advised require the interposition of the Court."<sup>45</sup>

*(To be concluded.)*

case at bar; but he refrains from deciding the point. See *The Exchange v. McFadden*, 7 Cranch 116, and *The Parlement Belge*, L. R. 5 Probate Div. 197.

<sup>44</sup> 256 U. S. —, decided May 2.

<sup>45</sup> See the cases cited in note 34, *supra*. On the question of what is a case "arising under this Constitution," etc. (Article I, section 2, clause 1), see note 6, *supra*; also *American Bank and Trust Co. v. Federal Reserve Bank of Atlanta*, 256 U. S. —, decided May 16.

## AMERICAN GOVERNMENT AND POLITICS

THE FIRST (SPECIAL) SESSION OF THE SIXTY-SEVENTH CONGRESS  
APRIL 11, 1921—NOVEMBER 23, 1921\*

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**The New Administration.** Beginning on March 4, 1921, the Republican party, for the first time in ten years, was in complete control of the executive and both branches of Congress. Entirely apart from the issues of party politics, its régime promised to be interesting. Campaign pledges had been made that legislation would be speedily passed relieving the country of the ill effects of what President Harding called "war's involvements;" economy and efficiency were to be secured; more business in government and less government in business were among the promises, and the reorganization of the administration, long talked of, was to be achieved. There were, moreover, two significant possibilities from the standpoint of party government. During the campaign, Mr. Harding said that "government is a simple thing," and that, if he was elected President, Congress would be allowed to play its proper part under the Constitution. He pledged the Republicans to inaugurate "party government, as distinguished from personal government, individual, dictatorial, autocratic, or whatnot." This was a pledge not to follow Mr. Wilson's example and coerce, or even lead, Congress; and the interesting question was, whether Congress would not be helpless without executive direction; whether legislative inefficiency is not the price that must be paid for the absence of some executive autocracy. In the second place, remembering the circumstances of President Harding's nomination and the different Republican elements which came together during the campaign, one was justified in wondering whether the party would continue to present a solid front in its congressional work; whether there would not be a split between progressives and reactionaries resembling that of 1910-1912. The congressional session gave answers to both of these questions: there were unmistakable signs that President Harding regretted his self-denying

\* For previous notes on the work of Congress, see *American Political Science Review*, Vol. 13, p. 251, Vol. 14, pp. 74, 659, Vol. 15, p. 366.

ordinance and realized that he should—on occasion he even tried to—lead Congress, and there developed a powerful revolt by members representing the agricultural sections of the country against the more conservative leadership of the party.

The House of Representatives elected Representative Gillett of Massachusetts as Speaker by a majority of 176 votes (Representative Kitchen receiving 122 votes) and adopted without change the rules of the Sixty-sixth Congress. It is worthy of note that the Republican majority in the House is so great that the two-thirds vote necessary to suspend the rules can be secured from the party following, and thus this safeguard of the rights of the minority is temporarily in abeyance.<sup>1</sup> In their committee assignments the Republicans adhered to the caucus rule of not putting the same member on more than one of the so-called "exclusive committees," the ten most important ones, but the rule was relaxed in two instances for the minority.<sup>2</sup> In the Senate the only noteworthy feature of the organization was the filibuster by the Democrats against the change that the Republicans proposed in the rules as to committees. With 14 new Republican members there were not enough vacancies to give each of them a place on an important committee, so it was sought to increase the membership of these committees from 15 to 16. There would thus be 10 Republicans on each committee, and the disparity between the majority and minority would be increased. Senator Brandegee gave notice of his proposed amendment to the rule on April 12, but the Republican majority was not able to force action until April 18. Another, and not unimportant reason for the proposed change, was that the Republican leaders wished to be sure of controlling their committees and not to suffer defeats by reason of the absence of regular Republicans and the combination of a progressive or so with the Democrats. The rule is still adhered to that a Senator cannot be a member of more than two of the "exclusive committees."<sup>3</sup>

<sup>1</sup> See Representative Pou's remarks, *Congressional Record*, April 11, p. 10.

<sup>2</sup> For a similar agreement in the Senate, see *American Political Science Review*, Vol. 14, p. 75. The House procedure was discussed on April 18, and the debate contains some interesting information about the control of the majority over minority committee assignments.

<sup>3</sup> See *American Political Science Review*, Vol. 14, p. 75. In the debate on the Republican proposal, Senator Williams quoted a Latin verse, now a very rare occurrence in the Senate, and Senator Brandegee, with great frankness, described the majority's intentions in a parody of Kipling's "Recessional" (*Congressional Record*, April 18, p. 340):

"The tumult and the shouting dies,  
The captain and the kings depart,  
And the steam roller is about to start."

**The Legislative Record.** As is always the case, private and local legislation occupied a major portion of the time of Congress. The session covered more than 150 working days, with a recess from August 24 to September 11,<sup>4</sup> after which, for several weeks, the House was without a quorum and made no attempt to transact any important business. It was far ahead of the Senate and could afford to mark time. The House was actually in session 139 days. One hundred and fifty bills and resolutions were passed, and 130 went through the House but were not considered by the Senate; so Representative Mondell, the Republican floor leader, could say that the House had made a record of an average of two bills or resolutions a day.<sup>5</sup> During the session, 9775 bills and resolutions were introduced into the House, but only 415 were considered by committees and reported. The Senate was confronted by 3103 bills and resolutions. Senate committees made 320 reports.

**Tariff and Taxes.** Congress was called together primarily to consider the tariff and the revision of the tax laws. The Emergency Tariff Act was passed, with some of its provisions changed from the form in which it was vetoed by President Wilson. The Tax Revision Law went through the House in four days and was considered by the Senate for six weeks, and as passed it satisfied no one. Senator Penrose, its chief author, called it "a temporary or transitional measure." A permanent tariff bill was passed in the House but failed of consideration in the Senate. Midway in the session, the administration determined that the tariff was such a difficult question and economic conditions in Europe and the United States were so unsettled, that it might be better to wait. Postmaster general Hays put the idea out in a speech and when the response from the country was favorable, action was postponed. There was much doubt particularly about the so-called "American valuation plan;" but even if the administration had been firm in insisting on its program, the measure could not have been considered

<sup>4</sup> The Senate leaders (both of the majority and minority) proposed a recess from July 7 to July 28, but their concurrent resolution was beaten (27-24) by the agricultural "bloc," which desired legislation for the relief of the farmers (amendments to the Federal Farm Loan Banks, the grain futures bill, etc.). See *Congressional Record*, July 5, p. 3501.

<sup>5</sup> "Private members, like governments, have all got legislation on the brain and think that the primary business of Parliament is to legislate, whereas in fact it is to look after the administration of existing laws so well that no new laws or very few are necessary." "A Student of Politics" (said to be Herbert Sidebotham) in the *London Times*, April 17, 1920; quoted, with some excellent remarks, by C. Delisle Burns, in *Government and Industry*, p. 61 (London, 1921).

by the Senate, for, as has been said, 130 bills and resolutions sent over by the House failed of passage. Even such an important matter as the Newberry case had to be postponed until the regular session.<sup>6</sup>

*Appropriations.* Even though this was a special session of Congress, several appropriation bills were necessary. The navy bill was not passed by the Senate at the short session, and the army bill failed under a pocket veto, President Wilson not believing that provision was made for a sufficient military force. The naval appropriation bill was passed with the Borah disarmament amendment attached and the appropriations somewhat scaled down by the insistence of the House, and the army bill limited the army to 150,000 men.<sup>7</sup> A deficiency bill for 1921 was necessary (H. R. 6300); appropriations were made for expenses incident to the first session of the Sixty-seventh Congress (H. R. 3707); the shipping board was given \$48,000,000; and \$4,000,000 more was allotted for carrying to completion the Alaskan railroad. Under the rules of the House, passed in anticipation of the Budget Act, which also became law, a single committee was responsible for appropriations.<sup>8</sup> The House also passed a deficiency bill for 1922 that was not considered by the Senate.

<sup>6</sup> The Senate committee on privileges and elections reported to the Senate (September 29) on the Ford-Newberry contest, and the resolution to dismiss Ford's petition was debated at intervals until the adjournment.

<sup>7</sup> An interesting question was raised when President Harding, in signing the bill, wrote to Congress that the normal expiration of enlistments would probably approximate one-half the reduction that Congress had ordered. But, he added, "I would not feel justified in asking the Secretary of War to enforce the dismissal of men who have enlisted for a definite term of service. There seems to be a moral obligation involved, the violation of which would be demoralising to the spirit of the army itself." The letter continued: "If a probable deficit develops in a just procedure to reduce our enlisted forces, I will report to the Congress at the earliest possible day." The act expressly provided that no deficit should be created. In this connection it is interesting to recall the statement made by President Wilson when he signed the Sundry Civil Appropriation Act of 1913, which provided that the funds appropriated for the enforcement of the anti-trust laws should not be used for the prosecution of agricultural associations or trade unions. In a memorandum made at the time of signature, Mr. Wilson said: "I can assure the country that this item will neither limit nor in any way embarrass the actions of the Department of Justice. Other appropriations supply the Department with abundant funds to enforce the law." The President said that if he had had the power to veto items in appropriation bills, this exemption would have gone out. See George Harvey, "Six Months of Wilson," *North American Review*, November, 1913 and *American Year Book 1913*, p. 24.

<sup>8</sup> See *American Political Science Review*, Vol. 14, p. 670.

*Other legislation.* Congress provided for amendments to the Volstead Act (with particular reference to beer); grants-in-aid to the states for road construction to the extent of \$90,000,000; and for the protection of maternity and infancy to the extent of \$1,500,000 for the current year, with the possibility of increases; the restriction of immigration; further assistance for the farm loan board; and amendments to the Edge Export Act. Laws were also passed forbidding gambling in grain futures and regulating the packers. The latter statute divests the federal trade commission of some of its authority and gives it to the secretary of agriculture. In the form in which it passed, it was not objected to very seriously by the packers; indeed, the charge was made in the Senate debate that the bill had been written by the packers, and its value as legislation will not be determined until there is opportunity to see its effects. The other laws are either of private, local, or very minor importance, and are not worth listing.

The House passed several important bills that were not considered by the Senate. The tariff bill has already been mentioned. In addition, the House passed a bill providing for the funding of government obligations to the railroads (there was a special message from President Harding urging immediate action on this but it was not taken up in the Senate), and a bill providing for a foreign debt refunding commission.

*The Bonus.* While no provision was made for a bonus, or "adjusted compensation" as the proponents of the legislation call it, ex-soldiers were cared for by the so-called Sweet Law. It consolidates into one veterans' bureau, the bureau of war risk insurance, the rehabilitation division of the federal board for vocational education, and the part of the public health service concerned with ex-soldiers. Regional offices throughout the country are provided for.

Several attempts were made to get congressional action on the larger question of "adjusted compensation."<sup>9</sup> The Senate committee reported a measure (June 20), and its consideration seemed likely until President Harding appeared before the Senate (July 12) and requested it to delay action. The bill was immediately abandoned.<sup>10</sup> Later, in the

<sup>9</sup> The House of Representatives passed a bill on May 29, 1920, although it was not intended that it should become law in that form. It was certain that the Senate would not consider it and it seemed wise to take some action before the presidential campaign. See *American Political Science Review*, Vol. 15, p. 79. The Senate committee also reported a bill in February, 1921, but it was not considered.

<sup>10</sup> On August 20, Representative Cockran sought to secure consideration by the House of a resolution appointing a committee of nine members "to consider

House of Representatives, Representative Fish sought to amend the Fordney foreign loan bill by providing that interest payments on the loans be used for a cash bonus for ex-service men. The amendment went out on a point of order, but the Republican leaders promised that in the next session of the Congress legislation would be put through. In the Senate, amendments were offered to the Tax Revision Law retaining the excess profits taxes for bonus purposes, but they were defeated.<sup>11</sup>

**The President and Congress.** President Harding's intention, announced in his campaign, was to be a "constitutional executive," and he apparently had no desire to interpret this according to Mr. Dooley's definition of "a constitootional ixicutive" as being "a ruler that does as he dam pleases an' blames th' people." The President was to announce a party program and give Congress his advice, but in no case was he to try to impose his will on that of the legislature. This attitude was doubtless in part responsible for the failure of Congress to function more efficiently, although, in view of the marked discontent with legislative bodies everywhere, it may be suggested that, comparatively, the record of Congress was not so bad. During the session the Washington correspondents sent up several kites to enable the President to ascertain whether public opinion would approve a more vigorous attitude; but apparently the popular mandate did not seem sufficiently definite to warrant him in increasing by one the campaign pledges that had been forgotten. On occasion, however, the President did let Congress know his opinions, but such occasional half-hearted intervention was not very successful.

There were no differences between the executive and legislature that resulted in vetoes, but that, probably, was due to the failure of Congress

what measures should be taken to vindicate the rights and privileges which have been violated and invaded by this action of the President of addressing a communication respecting legislation to the Senate, and not to the Congress, as required by the Constitution." The resolution was laid on the table. *Congressional Record*, p. 5788. In September, 1918, President Wilson appeared before the Senate and urged the passage of the then pending Woman's Suffrage Amendment, describing it "as a vitally necessary war measure," and "as vital to the right solution of the great problems which we must settle immediately when the war is over." The House had approved the amendment in January, 1918. See *American Political Science Review*, Vol. 14, p. 80. Mr. Wilson also delivered an address on the essentials of permanent peace to the Senate (January 22, 1917) "as the council associated with me in the final determination of our international obligations." See Scott, *President Wilson's Foreign Policy*, p. 245.

<sup>11</sup> *Ibid.*, October 29, p. 7798.

to do more and the desire of the President to avoid an open break, rather than to any meeting of minds. The President, for example, was beaten decisively on the question of surtaxes. He sent a letter to Representative Fordney asking a compromise of 40 per cent, but the House, even with a Republican majority of two-thirds, ignored his wishes. The House committee refused to accept Secretary Mellen's tax proposals, even though they had President Harding's approval; and Secretary Mellen's foreign debt refunding bill was materially modified before it passed the House on October 24. Even with a commission, instead of the uncontrolled authority of the secretary of the treasury which the administration proposed, the House accepted the measure with unfeigned reluctance. The President's attitude on the bonus was courageous, but here Congress was only too ready to shift responsibility to the executive and postpone the evil day of decisive action.

In one respect, President Harding took a very interesting attitude, which, if exercised frequently and on important matters, might be more "unconstitutional" than leadership of the Roosevelt or Wilson kind. I refer to the fact that, in some cases, he seemed to play the House of Representatives, which he could control, against the Senate which he could not. Thus, the emergency peace resolution was held up in the House in accordance with the President's wishes and was finally passed in the form that he desired.<sup>12</sup> On disarmament, he was not so successful in having his way. The Borah resolution, authorizing and requesting the President to invite Great Britain and Japan to a naval conference, was added to the naval appropriation bill by a unanimous vote in the Senate. The phraseology seemed to the President to be too definite, to give the Congress the initiative, if a conference was held.<sup>13</sup> No

<sup>12</sup> The resolution was dated July 2, 1921, but the formal proclamation of peace was not made until after the ratification of the peace treaties. It was issued on November 14, but was dated back to July 2.

<sup>13</sup> Before the session began, it was predicted in some quarters not far removed from the capitol, that the real control of foreign policy would be vested in the Senate, which, incidentally, was not enthusiastic over the appointment of Mr. Hughes as secretary of state. There was slight, if any, fulfillment of this prediction. The Senate ratified the treaty with Colombia, at the request of the administration and with remarkable promptness. (It was held over from the special session of the Senate, March 4-14, to approve appointments, and was taken up in the special session of Congress.) Mr. Wilson's much decried idealism was translated into interests, and Senators who voted against righting a wrong were in favor of ratifying to secure oil and harbor privileges. Some other unimportant treaties were ratified: the treaties with Germany and Austria went



attempt was made to have the Borah resolution defeated in the Senate, but when the measure was sent to conference, the House leaders refused to allow the House to express an opinion on this Senate amendment,<sup>14</sup> and the House foreign affairs committee reported a joint resolution, expressing "full concurrence in the declaration of the President 'that we are ready to coöperate with other nations to approximate disarmament'." It was not the intention that the resolution should be passed, but it was simply in the nature of an instruction to the conferees as to a possible modification of the Borah amendment. The sentiment in the House in favor of the Borah provision, however, was so strong that when the conference report was made, the House was given a straight-out vote. Mr. Mondell read a letter from President Harding saying that "it is not of particular concern to the administration what form the expression of Congress shall take," and so the Borah resolution was adopted with only four dissenting votes.

On the question of free tolls for American vessels passing through the Panama Canal, it was reported that President Harding was anxious to have action postponed until after the disarmament conference. But before the recess, the Senate had reached a unanimous consent agreement to vote on the Borah bill on October 10, and the bill was passed. The administration had little difficulty, however, in seeing that the bill was not brought up in the House.

*The Agricultural "Bloc."* One of the most interesting developments of the session was the power and activity of the so-called agricultural "bloc." This is simply a group of senators and representatives who decided to act together in matters affecting the farmer, to force concessions from the Republican leaders as the price of their support of the party, and to act as a unit in putting on the statute books measures of importance to the agricultural interests which the party leaders desired to delay or hesitated to sponsor. In the Senate 22 members, mostly from western states, can be listed as the minimum of the agricultural "bloc," but its proportions have on occasion grown to 55—28 Republicans and 27 Democrats. In the House there are about 100

through as proposed by the administration, and while President Harding was very tactful in appointing Senators Lodge and Underwood to his disarmament commission, the initiative here has been Secretary Hughes' and not the Senate's. One interesting incident of the relation of the President and Congress with regard to foreign affairs, was the failure of Mr. Harding to reverse President Wilson's action in refusing to carry out the provisions of the Jones Shipping Law. See *American Political Science Review*, Vol. 14, p. 670.

<sup>14</sup> See *Congressional Record*, June 3, P. 2090 and June 7, pp. 2234 ff.

members. Their most spectacular action was to agree with the Senate surtax amendment over President Harding's objecting letter.

The influence of the "bloc" in the Senate was shown by the Emergency Tariff Act, the law regulating the packers, the provisions of a billion dollars credit for farm exports, the regulation of grain exchanges dealing in futures, the Curtis bill appropriating \$25,000,000 as a revolving fund for farm loan banks, and the Kenyon bill, providing an increased rate of interest for farm loan bank bonds, without an increase of interest rates to the farmers. On the tax revision bill, the agricultural "bloc" gave the Senate leaders notice that certain changes would have to be made, and they were made. The surtax of 50 per cent on incomes, the repeal of the transportation taxes, and the increase of estate taxes, are schedules on which they forced concessions. Much was said, of course, of "class legislation," of the breakdown of party government, and no doubt was left as to the attitude of the administration. It may be suggested, however, that for the Republican leaders to declaim against the agricultural "bloc" is a case of the pot calling the kettle black, with the exception that the pot has been camouflaged, while the kettle glories in its inky expansiveness. Only the future can determine whether the activities of the group will be a flash in the pan or whether they will have a profound effect on party organization and congressional leadership.

**Notes on Procedure.** The session showed once more how the lack of restrictions on debate in the Senate delays legislation and how the extreme control which the House leaders exert can be used to prevent deliberation and force immediate action. The House passed 130 bills and resolutions that were not considered in the Senate, so much time did this body devote to the tariff and taxation, although it should be said that the Senate was concerned with the treaty with Colombia and the treaties of peace. As usual there was some discussion of the necessity for cloture, but the existing rule was not invoked; unanimous-consent agreements for a vote at a particular time sufficed in every case, and as usual there was only discussion with no action. Senator Harrison proposed changes in the rules providing that in the future there should be open executive sessions of the Senate to consider presidential nominations and treaties, but his resolution was defeated by reference to the committee on rules.<sup>15</sup>

<sup>15</sup> See *Congressional Record*, May 9, p. 1114, and May 14, p. 1429. On July 7, following the resignation of Mr. Wolcott, the senior senator from Delaware, Senator Walsh raised the question of whether a quorum of the Senate consisted

As usual, also, both the Senate and the House of Representatives lost a great deal of time in securing quorums and in having the roll called. In the Senate a quorum was called for 348 times, an average of more than twice a day, and there were 187 record votes. In the House members did not make the point of order as frequently as has been the case in past sessions, and the roll was called only 48 times.<sup>16</sup> There were 133 yea and nay votes. Nevertheless, the Senate and the House each spent about 16 days of the session in having the roll called.

In the debate in the House on the tax revision bill, Representative Cockran said that the House had fallen to the level of the electoral college. That was a slight overstatement, for the electoral colleges vote in silence, and members of the House make speeches, or, under leave to print, publish in the *Record* imaginary contributions to the debates. It is true, nevertheless, that on some of the biggest issues that come before Congress, the House, like the electoral colleges, is deprived of all discretion. It is limited by its leaders to a "yes" or "no" vote on the proposals that they make.

The House, for example, voted to terminate the state of war, but was not allowed to amend the emergency peace resolution, and the resolution as reported, was different from the one that, at the previous session, the House had been forced to accept without amendment.<sup>17</sup> The House passed the Emergency Tariff Act in the form in which it was vetoed by President Wilson. This, Representative Fordney said, was the "instruction" of the Senate finance committee. "If we send the bill back just as it was vetoed by President Wilson, they will pass it, but we must make no change in it. If we add anything or take anything out, they will not give it consideration." The House (according to the *Record*) showed a curious sense of humor and greeted this statement with "laughter." Further reflection, however, changed the senatorial mind. The bill was passed by the House the day after it was reported, but it did not go through the Senate until a month later and then was considerably amended.

While the Senate was not so openly exacting on the tax revision law, so far as the influence of the House was concerned, the result was

of 48 or 49. The discussion seemed to indicate that although the practice of the Senate adopted the former number, a strict interpretation of the constitutional provision would require the latter number. See *Congr. Record*, p. 3633.

<sup>16</sup> It was pointed out that during the Sixty-sixth Congress the House of Representatives lost time equivalent to ten working days in having the roll called on points of no quorum that were made by a single representative.

<sup>17</sup> See *American Political Science Review*, Vol. 15, p. 81.

substantially the same. The Senate added 833 amendments and yielded to the House on only 7 of them. The procedure in the House was just as effective a gag as the Senate's insistence that the emergency tariff bill must be passed unchanged. On its face, the rule for the consideration of the tax bill was an extremely liberal one. Two days of general debate were allowed, and then the bill was to be considered for amendment under the five minute rule; but, "committee amendments to any part of the bill shall be in order at any time and shall take precedence of other amendments." When the two days allowed for amendment elapsed, there was no time left for the individual member to propose changes. The hour fixed for a vote arrived and the House had but a single opportunity to express an opinion on a schedule. This was afforded by the Democratic's leader's motion to recommit to the ways and means committee. In the Senate there were nearly a hundred roll calls; in the House, which under the Constitution has the greater responsibility, there was a single roll call on what should go into the bill.<sup>18</sup>

In the discussion of the bill for reapportionment of representatives, which was returned by the House to the committee, a good deal was said about the decline of the House of Representatives in the opinion of the country and its subordinate position in comparison with the Senate. At the previous congressional session, the House had passed a reapportionment bill which would have kept the number of representatives as at present—435. The bill was not considered in the Senate,<sup>19</sup> and in the debate on the second bill it was said that the reason for the failure of the Senate to act was that the Senate desired to see the

<sup>18</sup> There was a roll call later on the question of whether the Senate 50 per cent surtax amendment should be agreed to.

Attention should also be called to the fact that the House passed two important bills under suspension of rules. The rural posts roads bill, providing for assistance to the states in road construction was passed under suspension of rules with the House not allowed to propose amendments, and the same day (June 27) the leaders put through the anti-beer bill. This was intended to overturn the attorney-general's ruling and was an emergency measure, introduced by the chairman of the rules committee himself, because he thought that the Volstead supplemental act had too many details and covered too many subjects to throw it open in the House at that time for debate, amendment and vote. On this occasion, however, by unanimous consent, debate continued for four hours instead of the customary forty minutes. It was said in defense of such a procedure that, thus limited as to its action, the House would deliberate "in a much more dignified manner."

<sup>19</sup> See *American Political Science Review*, Vol. 15, p. 370.

numbers of the House increased; that if the proposal then pending, to increase the number to 460 were adopted, there would be no objection from the Senate. The upper chamber, it was said, believes that its own strength will be increased by a more numerous House of Representatives, for the more unwieldy the House becomes, the more willing its leaders will be to resort to an extreme form of guillotine and force formal votes of approval of their proposals. The House would continue to be vociferous, but would be weak, for the Senate could deal much more effectively with the masters of a shackled chamber than with the agents of a deliberative assembly. This interpretation of the Senate's attitude on reapportionment may not have been authoritative, but it at least had the earmarks of reasonableness, and, considered in connection with present day procedure in the House, sheds some light on the operation of the bicameral theory in the congressional system.<sup>20</sup>

<sup>20</sup> Attention should be called, however, to the fact that the change in the House rules requiring matters added to bills in the Senate which would have been subject to points of order if originally proposed in the House, to be brought in by the House conferees for separate votes, again resulted in the House being able to have its way as against the Senate. This was particularly true with regard to the naval appropriation bill. The House forced substantial reductions. In the discussion of the conference report on the naval bill in the Senate, there are some very plaintive references to the effects of this House rule. Reference should also be made to the Senate debate on November 23 on the conference report on the tax revision bill. This contains a very valuable discussion of the powers of conference committees.

## LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

**State Tax Legislation in 1921.** During the last year the most interesting developments in the field of state taxation, with few exceptions, have been constitutional. This is true for the negative as well as the positive accomplishments. In 1920, the voters of twelve states, all of which states are of the west or south, with the exception of Maine and New Hampshire, voted upon 26 constitutional amendments relating to subjects dealing with taxation or finance. Of the 26 amendments, 18 were adopted and 8 defeated. During the year 1922 ten constitutional amendments relating to taxation will be voted upon in eight states.

*Constitutional Amendments on Taxation.* Twelve states in 1920 voted upon proposed changes in the revenue sections of their constitutions. These states and the amendments are as follows:

California voted upon four constitutional changes, two of the amendments having been proposed by legislative action and two by initiative measures. Two of the amendments were adopted and two were defeated. The more important of the two which were accepted relates to the alien poll tax. It was adopted by the overwhelming vote of 667,924-147,212. The amendment provides for an alien poll tax of not less than \$4 on every alien male inhabitant of the state over twenty-one years of age and under sixty years except certain defectives. The tax received is to be paid into the county school fund in the county where collected. The legislature, in harmony with this constitutional provision, has enacted a law providing that such alien male inhabitants shall pay an annual poll tax of \$10. A penalty of 50 per cent is provided for the nonpayment of the poll tax and provision made, in case the tax and penalty are not paid, for the seizure of personal property owned by the delinquent and sale of such property after three hours verbal notice of time and place; also all debts owing to such delinquent, including wages, are made subject to garnishment and seizure. The collection of this poll tax is placed in the hands of the assessor, who is authorized to employ extra field deputies, one for each thousand aliens residing within the county.

The second amendment adopted adds a new section to the constitution exempting orphanages from taxation. This amendment was carried by a vote of 394,014-371,658.

Colorado adopted an amendment which was proposed by an initiative petition, increasing the limit of the state levy from 4 to 5 mills, the extra mill to be devoted to the erection of additional buildings to be used by the state educational institutions.

The voters of Mississippi in 1920 adopted an amendment relating to laying a poll tax on women.

Missouri adopted the following constitutional changes: (1) Authorizing cities of 75,000 inhabitants or more to acquire and pay for waterworks, gas and electric light plants, street railway, telegraph and telephone systems. (2) Authorizing cities of 30,000 inhabitants or more to incur additional indebtedness for the purchase or construction of waterworks, ice plants and lighting plants. (3) Requiring county courts to levy an additional road tax of 50 cents on the \$100 valuation of any road district if a majority vote so declares. (4) Providing for the levy of an annual tax of not less than  $\frac{1}{4}$  of 1 cent nor more than 3 cents on each \$100 valuation of taxable property for the raising of a fund for the education of the deserving blind. (5) Providing for a bond issue of \$1,000,000 for a soldiers' settlement fund and the levy of a tax of one cent on each \$100 valuation of taxable property. The object of this amendment is to provide employment and rural homes for honorably discharged soldiers, sailors and marines of the state who have served in any of the wars of the United States. (6) Authorizing the issue of road bonds in the sum of \$60,000,000 and the laying of a direct annual tax to care for the interest and principal. Provision is also made for the appropriation of a certain part of the motor vehicle fees and taxes to be applied in payment of the principal of the bonds. (7) A further amendment to be voted upon at a special election in August authorizes the interest on these road bonds to be paid from motor vehicle fees and licenses.

Nebraska's new constitution, adopted September, 1920, provides that "Taxes shall be levied by valuation uniformly and proportionately upon all tangible property and franchises and taxes uniform as to class may be levied by valuation upon all other property. Taxes, other than property taxes may be authorized by law." This provision is a great improvement upon the old revenue section adopted in 1875. In the section dealing with exemptions, the only new provision is the exemption from taxation of "household goods to the value of \$200 to each family."

North Carolina adopted four amendments, the most important of which relates to the income tax. The old provision stated "that no income shall be taxed when the property from which the income is derived is taxed." This provision limited the income tax from salaries, wages and fees. The new amendment removes this provision and definitely provides for a tax on income derived from all sources, not to exceed 6 per cent, and with exemptions of not less than \$2,000 for a married man or a widow or widower having minor children and to all other persons \$1,000.

Another amendment provides that the poll tax for state purposes shall not exceed \$2 and for cities and towns \$1. A further amendment reduces the rate of tax for state and county purposes from 66 $\frac{2}{3}$  cents to a limit of 15 cents on each \$100 valuation of taxable property. The fourth amendment abolishes payment of the required poll tax as a qualification for voting.

Virginia adopted two amendments, one of which prohibits school districts from exceeding the levy fixed by law for the raising of additional sums for school purposes. The other permits the state to contract debts for the purpose of constructing or reconstructing public roads.

Of the two measures defeated in California, both were initiated by petition and both were important. One related to the levy and collection of ad valorem tax for state university purposes of 0.2 mills per dollar on taxable property. Though the amendment was of the greatest importance to the future financial welfare of the university it was defeated by a vote of 380,027-384,667. The other initiative measure related to the single tax principle. It proposed that beginning January 1, 1921, there be exempted from taxation personal property, planted trees, vines and crops; improvements appertaining to land being taxed at not exceeding preceding year's amount until exempted January 1, 1923, and other county, municipal and district revenues collected from land values; beginning January 1, 1924, requires that all public revenues be raised by taxing land values exclusive of improvements; declares war veteran, church and college exemptions and privately owned utilities using highways, unaffected thereby. This measure went down to defeat. The vote was 196,694-563,503.

In Maine provision for an income tax was defeated at the September election in 1920 by a vote of 53,975-64,787.

In Minnesota an amendment which proposed to tax incomes and exempt certain real and personal property was defeated. It is evident



that the incorporation of the income tax provision with the one relating to the exemption of certain personal property from taxation defeated the amendment, as the exemption provision was reasonable in itself.

Montana voters defeated a constitutional amendment which proposed to substitute a tax commission of three members for the state board of equilization, and to "classify property for the purpose of taxation and provide the per centum of value of each class as the basis for taxation where a classification has not been made."

In New Hampshire for the second time the voters rejected the income tax amendment to authorize the legislature to impose a tax "upon incomes from whatever source derived, which taxes may be graduated and progressive, with reasonable exemptions." The amendment providing a graduated inheritance tax was also defeated for the second time. Both of these amendments were rejected in 1920.

The single tax amendment which the Oregon Single Tax League had proposed by initiative petition was decisively defeated. This amendment proposed as follows: "To assess all taxes necessary for the maintenance of state, county, municipal and district government upon the value of the land itself irrespective of the improvements in or on it, and to exempt all other property and rights and privileges from taxation from July 1, 1921 to July 1, 1925; and thereafter to take the full rental value of the land, irrespective of improvements as taxes, and no other taxes of any kind to be levied."

Three vital amendments to the Indiana constitution submitted at a special election September 6, 1921, were defeated. One proposed to give the governor the power to approve or disapprove any item in any appropriation bill. A second further amendment stated that "the general assembly shall provide by law for a system of taxation." If adopted, all restrictions on the power of the legislature over taxation would have been removed. It would appear that the adoption of this second amendment would permit the imposition of an income tax; but, in spite of this fact, a further amendment was proposed relating to the "levy and collection of taxes on incomes from whatever source derived."

*Constitutional Amendments to be Voted Upon in 1922.* In California the 1921 legislature passed three amendments to be voted upon in 1922. One relates to the imposition of a tax in lieu of all other taxes and at a different rate upon all notes, debentures, shares of capital stock, bonds or mortgages not exempt from taxation; the second amendment includes those released from active duty under honorable condi-

tions in the class of veterans whose property to the value of \$1,000 is exempt from taxation; a third amendment proposes a material increase in the rate of tax on public utilities and certain corporations.

In Michigan an income tax amendment passed a special legislative session to be voted upon in 1922. It provides "for a tax of not to exceed four per cent upon net gains, profits and incomes from whatever source derived, which tax may be graduated and progressive," and classification of property, persons, firms and corporations is permitted. The state tax commission opposed the limitation of the tax to "four per cent" and the insertion of the word "net" before "gains, profits and incomes."

In Minnesota an amendment will be voted upon in 1922 providing for an annual occupation tax, in addition to all other taxes, on all ores mined by any person or corporation; 50 per cent of the tax to go to the state, 40 per cent to the permanent school fund and 10 per cent to the permanent university fund.

Missouri will vote upon a veteran bonus amendment in 1922 which calls for a bond issue and a direct annual tax to care for the principal and interest.

In Montana the 1921 legislature proposed an amendment to be voted upon in 1922 providing for a state board of equalization, with the powers and duties of a tax commission. An amendment in 1920, to this same section of the constitution, sought to create a state tax commission and to provide for the classification of property for tax purposes, but was defeated by the voters.

In Oklahoma an amendment to be voted upon in 1922 proposes to increase the rate of levy for all purposes in the state from  $31\frac{1}{2}$  mills to  $41\frac{1}{2}$  mills. The sole beneficiary is the local school district which receives the added 10 mills.

Two amendments passed the Pennsylvania legislature in 1921, but must again pass the session of 1923 before submission to the people. One of these would remove the specific names of certain military orders and insert organizations of honorably discharged soldiers, sailors and marines whose property may be exempt from taxation. The other amendment provides for the classification of property for the purpose of laying graded and progressive taxes.

In Tennessee an amendment which passed in 1921 and will be voted in 1922, provides for a uniform tax on persons and property of the same class and for exemptions by general law. A further amendment passed proposing an income tax upon incomes "from whatever source derived." This measure must pass another session before submission to the voters.

In Utah an important amendment passed in 1921 will be voted upon in 1922. This measure will empower the legislature to classify for purposes of taxation all property except mines or mining claims and to impose graduated and progressive taxes upon incomes.

*State Tax Commissions.* Twelve states, either through new measures or by amendments to previous law, passed legislation relating to the state administration of the tax system. California enacted a new law requiring the state board of equalization to report to each legislature and to the governor the relative percentage of tax borne by corporations and industries paying taxes to the state, as compared to the percentage or rate of ad valorem tax borne by property locally taxed.

Idaho, while she has a state board of equalization, created a bureau of budget and taxation in the office of the governor. The duties of this bureau are: a visit to each county at least once a year for the purpose of securing assessment data; to aid the state board of equalization; to submit an estimate of the values of all public service corporations to the state board; to investigate the tax laws of other states and to recommend changes to the governor. In addition to the foregoing the bureau is expected to investigate the work and efficiency of state departments and prepare plans for the coördination of departmental work.

Illinois provides that the tax commission shall consist of five members. Indiana made minor changes in the supervision, by the state board of equalization, of local assessments and the issuance of bonds. Nebraska, in a new law, authorizes the appointment of a single tax commissioner, term two years, salary \$5,000. He has jurisdiction over all revenue laws, subject, however, to review by the state board of equalization and assessment of which he is a member.

New Mexico made a general revision of its revenue code but made no change in the form of the tax commission created in 1919, that is, a chief tax commissioner who devotes all his time to the work and two associate commissioners on part time. The outstanding feature of the new law is that the tax commission is given original jurisdiction to assess and fix the values of all public utilities, banks, mines, oil and gas properties. It is to exercise general supervision over the administration of the assessment and tax laws, over boards of equalization and all officers having power of levy and assessment and it is to confer with, assist, advise and direct such officers. The state tax commission is further charged with the approval of county budget estimates.

New York is notable for the constructive character of its 1921 tax legislation. The outstanding feature was the consolidation of all state

tax agencies in a single tax commission composed of a president and two associate members. Formerly there were three taxing departments, the state tax commission, the state comptroller and the secretary of state. The reorganized commission will administer the following taxes: personal income tax; inheritance tax; stock transfer tax; license tax on motor vehicles and cycles; corporation taxes of every nature including the income tax on business corporations. The commission will continue to assess special franchises and supervise the mortgage recording tax.

North Carolina also has taken advanced ground in the reorganization of its revenue system. The most important step appears to be the creation of a state department of revenue with a single commissioner whose sole duty is the supervision of the revenue code. Formerly the corporation commission supervised the revenue code in addition to the regulation and supervision of railroads, public utilities and banks. There is also created a state board of equalization composed of the new commissioner of revenue, the chairman of the corporation commission and the attorney-general. This board shall hear and determine appeals.

Tennessee created two tax administrative agencies: a tax department with a single tax commissioner, and a state board of equalization of six members, one of whom is the tax commissioner. The term, both for the board and the commissioner, is six years. The commissioner has general supervision over the administration of the tax laws; fixes rules governing local tax officials; procures the assessment of all property at its actual cash value and administers corporation tax law. The state board of equalization is given full power to investigate assessments. An evident weakness yet remains in the present revenue system of the state, namely, the method of assessing public utilities. These are still subject to assessment by the railroad commission and to equalization by a separate board consisting of the governor, secretary of state and state treasurer.

In Washington, under the new administrative code consolidating the various state departments, the tax commissioner becomes supervisor of the division of taxation in the department of taxation and examination. The tax commissioner of West Virginia is made eligible for reappointment and authorized to employ experts and appoint appraisers to aid in valuation of taxable property. In Wyoming, the chairman of the state board of equalization is authorized to call in December each year, a meeting of the county assessors and one member of the board of county commissioners to meet with the state board to discuss matters relating to the tax laws.

*Special Tax Investigation Commissions.* Seven states authorize special commissions to make a study of taxation. California repealed the act of 1915 appropriating \$75,000 for an investigation and report upon taxation. Iowa has a joint legislative committee of eight, four senators and four representatives, to study and report upon a revision of the tax laws. The committee is authorized to prepare such bills "as will provide adequate and fair means and methods of assessment and equalization, and place and distribute the burdens of direct taxation fairly and equitably." It is also permitted to employ expert assistants.

Georgia provides for the appointment of a joint legislative committee to consider the question of changing the system of taxation from an ad valorem property tax. Report is to be made to the 1922 legislative session.

New Jersey continues its special tax commission created in 1919. The special work of the commission is to prepare bills on the following, to be presented to the legislature in 1922: (1) The elimination from taxation of all personal property, including machinery, raw materials, stock on hand, investments and accounts. (2) A state income tax at a sliding scale not to exceed 6 per cent on all incomes in excess of \$1,000, using the same exemptions as the national government to be collected by the state and distributed to the various communities in proportion to their final assessed valuations of realty. (3) A referendum to the voters of New Jersey at the general election in 1922, as to the adoption or rejection of all such proposed legislation.

New York also continues its special commission to investigate the taxation of public service corporations and the special franchise tax.

Oregon provided for a committee of seven, appointed by the governor, to examine into the possibilities of new sources of revenue or new methods of taxation and formulate plans or suggestions to the governor for the use of the legislature in 1923.

Utah authorized the creation of a special commission of five citizens, to be appointed by the governor, one to be a member of the state board of equalization. This commission is to decide upon the policy or necessity of an income tax or of a classified property tax, or of such other system of taxation of property, real and personal, tangible and intangible, as in the judgment of the commission may arrive at a more equitable distribution of the burden of taxation and afford adequate revenues to the state, and is to report on or before January 1, 1923.

Washington has appropriated \$20,000 to be used to secure data on taxation for the use of the next session of the legislature. The state is

moved to make this investigation by reason of the fact that real and tangible personal property are now bearing the entire burden of taxation. The governor is authorized to employ expert assistants.

*Local Tax Administration.* Massachusetts authorizes assessors of towns to appoint and remove citizens as assistant assessors. In cities, the mayor or assessors may appoint such assistant assessors. Michigan provides that the county board of supervisors in equalizing the assessments shall do so by estimating the true cash value of the real estate and personal property subject to assessment.

New Jersey provides for the removal of an assessor for neglect of duty. Removal is to be made by the state supreme court upon complaint of the state board of taxes and assessments. The assessor removed is not eligible to hold the office again for five years. New Mexico gives the county assessor an increased allowance for assistants and expenses.

New York authorizes cities of the second and third class to provide for a department of assessment and taxation. Such cities may by ordinance abolish the office of assessor if such office is not a part of the city charter. Pennsylvania authorizes boroughs, townships, school districts and poor districts to appeal from any assessment to the board of revision and to the courts. This law places such districts on the same level with regard to appeals from assessments as the individual assessed. A further law provides that in counties of the first class (which relates to Philadelphia), assessors may hereafter be appointed without regard to political party affiliations and provision for representation by minority political parties is eliminated. West Virginia removes the qualification "being a freeholder in the county in order to hold the office of assessor" and simply requires the condition of residence.

*Exemption from Taxation.* Sixteen states materially amended the statutory provisions relating to tax exempt property. Ten states made more liberal the provisions exempting the property of veterans or veterans' organizations.

Iowa increases the value of exempt property of veterans of the Mexican and Civil Wars from \$300 to \$3000; of the war with Spain, Chinese relief or Philippine War, from \$300 to \$1800; and property of veterans or nurses in the World War is exempt to the value of \$500. Maine includes "marines" as beneficiaries of the property exempt clause and adds that property conveyed to any veteran for purpose of obtaining exemption from taxation shall not be so exempt. Massachusetts increases the exempt value of the real and personal estate of veterans' organizations from \$50,000 to \$100,000.

New Hampshire changes the value of the exempt taxable property of veterans of the Civil War, Spanish-American War and Philippine War, from \$3000 to \$5000; disabled veterans of the foregoing wars and of the World War may be exempt from paying a poll tax by the selectmen; the personal property and real estate owned and occupied by the G. A. R., United Spanish War Veterans or the American Legion is also exempt. New Jersey and North Carolina exempt buildings, real estate and personal property of all veterans' organizations. New York includes amongst the beneficiaries of the exemption law "dependent mothers" of any person receiving the pension, bonus or insurance.

Oregon, by a new law, exempts property of soldiers or sailors of the Mexican War, Indian War, or Civil War or their unmarried widows to the value of \$1000. Vermont exempts the real estate and buildings owned by any post of the American Legion and increases the value of exemption of a veteran of the Civil War or his widow from \$500 to \$1000 when the entire estate does not exceed \$1500. Wyoming exempts property to the value of \$2000, of veterans of the Civil, Spanish-American and World Wars, their widows during widowhood and nurses who served in the World War. This state also exempts such veterans from poll tax except school polls.

A number of states seek to encourage agriculture, education, industry and transportation by lessening the burden of taxation. California exempts from taxation "date palms under eight years old, fruit and nut bearing trees under four years old and grape vines under three years old." Idaho by a very interesting but abstruse amendment seeks to exempt from taxation the property of electrical power and transmission companies used for furnishing power for pumping water on irrigated lands. Exemption is to benefit the consumer or user of the water, except in the case where such water is sold or rented, in which event the property of the company is to be taxed to the extent that the water is sold or rented. The state board of equalization is to determine the amount of exemption due the company and reduce its taxes to that extent. The amount of the exemption shall equal the amount of taxes included in the rates of the company or utility. The amount of taxes which would have been due had not the exemption been granted is to be credited upon the bill for power rendered to the consumer, in the proportion which the consumer's use of power bears to the whole amount of power furnished.

Indiana increases the exemption of real estate for manual and trade schools from 320 to 800 acres, and also exempts certain municipal and

other local government bonds issued for certain improvements of public benefit; also bonds and notes of the state board of agriculture; real estate and personal property used by the Indiana National Guard or other military organizations for armory purposes, and real and personal property of organizations not for profit, which are organized to discover and prevent fires and save property. Massachusetts provides that no commutation or excise tax is to be assessed against any street railway or electric railroad company during 1922 and 1923. New Hampshire extends to include the year 1923 an act passed in 1919, which exempts any street railway from taxation if during the year it has been unable to meet its operating expenses and fixed charges. Rhode Island relieves the United Electric Railways Company and the Newport Electric Corporation from the payment of all taxes including the various municipal franchise taxes, except the state tax upon gross earnings of one per cent.

Nebraska makes a specific exemption of household goods of the value of \$200 to each family. New York at the special session in September 1920 authorized counties and municipalities to exempt from county or local taxes for ten years new dwelling houses commenced before April 1, 1922, and completed within two years. In order to validate an ordinance of New York City passed in February, 1921, which exempted from taxation for ten years new dwellings, with a maximum exemption of \$100 for each room and not to exceed \$5000 for a single family house or apartment of a multi-family house, the legislature passed an act permitting local authorities to limit the exemption of new dwellings.

North Dakota takes the unusual stand of reducing the tax exemption. On residences on city lots the value of the tax exemption is reduced from \$1000 to \$500, and on the tools, implements or other equipment of a farmer from \$1000 to \$500. Oregon, by a new law, exempts all state or county bonds issued for construction or maintenance of public roads or bridges, the exemption not to apply to income received from any investment in such bonds. Rhode Island exempts the real and personal property of fraternal organizations the net income from which is used to build an asylum, home or school for the education and relief of indigent members, their wives, widows or orphans. Wisconsin, by an amendment, exempts personal ornaments and jewelry habitually worn, not to exceed in value \$750; the real property exemption of religious organizations used as a home for the feeble minded is increased from 120 acres to 160 acres; a new law exempts not to exceed 40 acres nor less than 20 acres to any bona fide settler for agricultural purposes for three years if such real estate, when acquired, is uncleared and unimproved.



*Income Tax.* Six states amended their income tax laws. Massachusetts limits the additional deductions allowed in the case of business incomes to the proportion of business expenses which the taxable interest and dividends bear to the total interest and dividends. The amendment requires fiduciaries, for the purpose of the income tax, to make annual return of gains from the sale of intangible personal property. A new law provides for an extra tax upon the net income of certain corporations of  $\frac{3}{4}$  of 1 per cent. "Net income" is defined as that income furnished the federal government and due prior to April 1, 1921. No credit is allowed for any federal, war or excess profits tax or other income taxes.

Missouri, at the special legislative session in August, reduced the rate of tax on incomes from  $1\frac{1}{2}$  to 1 per cent.

New York passed several amendments to the personal income tax law, but the most important relates to a method of computing gain or loss from the sale of property. This amendment provides as follows:

(1) In ascertaining the gain or loss from the sale or exchange of any class of property "the basis shall be, in case of property acquired on or after January 1st, 1919, the cost or the inventory value if inventory is made in accordance with the income tax article."

(2) In case of property acquired prior to January 1, 1919, and disposed of thereafter, (a) No profit shall be deemed to have been derived if either the cost or the fair market price or value on January 1, exceeds the value realized. (b) No loss shall be deemed to have been sustained if either the cost or the fair market price or value on January 1, 1919, is less than the value realized. (c) Where both the cost and the fair market price or value on January 1, 1919, are less than the value realized, the basis for computing profit shall be the cost or the fair market price or value on January 1, 1919, whichever is higher. (d) Where both the cost and the fair market price or value on January 1, 1919, are in excess of the value realized, the basis for computing loss shall be the cost or the fair market price or value on January 1, 1919, whichever is lower."

North Carolina, in harmony with the constitutional amendment, enacts a statutory income tax on both personal and corporate incomes. The rate of tax is, for corporate income, 3 per cent; for personal incomes a graduated tax of from 1 to 3 per cent, the maximum being 3 per cent on the excess over \$10,000. To single persons, an exemption of \$1000 is granted, to a married man with a wife living with him \$2000, and in the case of a widow or widower with minor children, \$2000. The law

also exempts the income of a citizen from an established business outside the state and taxes income of a nonresident received from an established business within the state. The law is administered by the state tax commission and the proceeds are for the use of the state.

North Dakota exempts from the income tax law, "interest upon the obligations of the state of North Dakota and its political subdivisions." Wisconsin provides that in deductions from the income of persons no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property, or for the conduct of a business, unless income from such property or business is subject to income tax. A new law exempts coöperative associations and other similar organizations from filing a state income tax return unless subject to an income tax. By a further amendment 10 per cent, formerly 15 per cent, is allowed as a deduction on account of gifts to religious, charitable, humane or scientific corporations.

*Inheritance Tax.* Seventeen states made amendments to their inheritance tax law. California, in a complete revision of the 1917 inheritance tax law, provides a schedule of deductions to be used in determining the market value of the property transferred. The rates upon transfers to relationships of the first and second degrees were materially amended. On amounts in excess of \$500,000 the maximum rate is 12 per cent for first degree relationship, and for second degree, 18 per cent. In the case of third degree relationship the maximum rate is 20 per cent upon amounts in excess of \$200,000, and for fourth degree, 20 per cent upon amounts in excess of \$100,000. The former maximum rates varied according to degrees of relationship. For first degree, 15 per cent upon amounts in excess of \$1,000,000; second degree 25 per cent in excess of \$1,000,000; third degree, 30 per cent in excess of \$1,000,000; fourth degree, 30 per cent in excess of \$500,000.

Colorado makes a complete revision of the inheritance tax law. Residence, for purposes of the tax, is to be established if the decedent shall have dwelt or lodged in the state for the greater part of twelve consecutive months in the twenty-four months next preceding his death. Rates are materially increased for each degree of relationship. The office of inheritance tax commissioner is created and the appointment made by the attorney-general. The appointee is to be an attorney who has practised law in the state for not less than five years immediately preceding his appointment.

Georgia amends the inheritance tax act by authorizing the inheritance tax commissioner to appoint agents to examine estates for

inheritance tax purposes, the commissioner to review all appraisements and assessments made by such agents.

Illinois increases the rates on all degrees of relationship 100 per cent, so that the maximum, for first degree relationship, is 14 per cent; for second degree, 16 per cent and in all other cases 30 per cent.

Iowa makes a general revision of the inheritance tax law. The former rate of 5 per cent changed to graduated rates, the minimum being 1 per cent and the maximum 7 per cent for first degree relatives; and a minimum of 5 per cent and a maximum of 7 per cent for any other "person, firm, corporation or society."

Missouri, at the special legislative session in August, increased the widows' exemptions from \$15,000, the former amount, to \$20,000; and the rate on estates amounting to \$50,000, or more was slightly lowered.

Montana enacts an entirely new inheritance tax law which, it is stated, is almost identical with the Wisconsin law. New Hampshire, by a new law, provides for a transfer tax of 2 per cent upon all personal property within the state owned by a nonresident upon death of owner. New Mexico, in its general revision of the revenue system, included the former inheritance tax law but no important changes are made, the rates and exemptions remaining as in the former law.

New York in consolidating the tax agencies of the state transfers the administration of the inheritance tax to the state tax commission. An amendment provides that a "transfer made within two years prior to death without adequate consideration will be deemed to have been made in contemplation of death." Transfers by a "bargainor" as well as a "grantor" or "donor" are made taxable, and the state tax commission is authorized to fix the number and salaries of appraisers. North Carolina amends the law to include in the class of second degree relatives "uncle or aunt by blood." North Dakota provides that the county from which the inheritance tax is paid shall receive from the state treasurer 50 per cent of the amount, formerly 25 per cent. A further amendment exempts from the tax all intangibles of nonresident decedents.

Pennsylvania increases the rate from 5 per cent to 10 per cent upon all property passing to persons other than direct heirs. Rhode Island enacts a law which authorizes the tax commissioners to employ some person to administer the inheritance tax law. In Washington, under the new administrative code, the inheritance tax department is transferred to the office of the attorney-general. A new law exempts, from

the inheritance tax, bequests for charitable and educational purposes within the state.

Wisconsin increases the tax value of the estate exempt to the widow from \$10,000 to \$25,000. The rates for relatives of the first degree are increased to 2 per cent, formerly one per cent; second degree 4 per cent, formerly 2 per cent; third degree 6 per cent, formerly 3 per cent; any other degree 8 per cent, formerly 5 per cent. Wyoming creates the office of inheritance tax commissioner and makes the state insurance commissioner the commissioner ex-officio.

*Public Utilities.* California raises the rate of state tax on certain public utilities. The tax is a percentage upon the gross receipts earned within the state. Railroads, however, are separated from street railways and taxed at the rate of 7 per cent, street railways at 5½ per cent. It is provided, however, that in case the courts determine that the legislature is without the power to thus differentiate between railroads and street railways in the rate of tax, that the tax on street railways shall be 7 per cent also. Various car companies, express, telephone, telegraph, gas or electric light companies are increased over former rates. The rates on all franchises, other than on those of certain public utilities are also raised.

Minnesota requires, by a new law, that the personal property of electric light and power companies having a fixed situs shall be listed and assessed where situated without regard to the company's principal place of business. The rate of tax upon the gross earnings of telephone companies is increased from 3 to 4 per cent.

New Jersey amends the law taxing railroads so that the state board of taxes and assessment shall complete its valuation of railroad property by November 1. The old law provided that the assessment as well as the valuation on second class railroad property should be completed by November 1. It was necessary therefore for the board to use the tax rates of the year in which the assessment was completed, though the tax was not to be used until the following year. Under the new amendment, the railroads will have an opportunity to review the valuation before the assessment is completed, and the tax rates applicable to the valuation made will be the rates for the current year in which the taxes are to be used.

New Mexico provides that the valuation of such public utilities as railroads, telegraph, telephone and transmission companies shall be based upon the valuation made by the interstate commerce commission, plus the value of subsequent betterments. The allocation of the value

of rolling stock to the state is to be made upon the basis of days in the state.

Wyoming, by a new law, requires the state board of equalization to assess all public utilities, other than express, railroad, telephone and telegraph companies. The state board shall also assess all pipe line companies.

*Miscellaneous Corporations.* California increases the rate of tax payable to the state on shares of capital stock of banks from 1.16 to 1.45 per cent; and on the gross premiums of insurance companies from 2 per cent to 2.6 per cent.

Connecticut requires a retail mercantile business and a wholesale mercantile or manufacturing business to pay to the state a tax of \$1 on the \$1000 or fraction of gross income from such business and 25 cents on a like amount from a wholesale business conducted within the state. In each case a minimum tax of \$5 shall be paid. If a financial loss is sustained, without making any deduction for salaries, no tax, other than the tax of five dollars, computed on gross income, is to be paid.

Michigan enacts a new law which provides for fees and taxes on corporations. For filing, examining and certifying articles and amendments, and for annual or special reports certain fees are charged varying from 50 cents to \$10. Franchise and organization fee for both domestic and foreign corporations is one mill upon the dollar of authorized capital stock, in any case a minimum fee of \$25. For filing annual report, an annual fee of  $3\frac{1}{2}$  mills upon each dollar of paid up capital stock and surplus, no fee to be less than \$50. Building and loan associations when filing annual report to pay fee of one mill upon each dollar of paid up capital and legal reserve. No such fee to exceed \$2000. Mining corporations to pay an annual fee of  $3\frac{1}{2}$  mills upon each dollar of the fair average value of its issued capital stock. Such fee not to be less than \$50 nor more than \$10,000. The tax on foreign corporations to be based on the relation of the property in the state to the total property of the corporation elsewhere.

Missouri, at the special legislative session in August, reduced the annual franchise tax on corporations from the former rate of  $\frac{1}{16}$  of 1 per cent to  $\frac{1}{16}$  of 1 per cent.

Nebraska places a tax of 4 mills on the dollar of the gross earnings of building and loan associations. This tax to be in lieu of all other taxes on the intangible property of such associations. Grain brokers, manufacturers of sugar, motion picture film distributors and oil dealers, are to pay the same rate of tax on their average total investment as on the

tangible property. This tax to be in lieu of all other taxes. New York provides for an organization tax of 5 cents a share on corporations issuing shares of no par value. If the corporation is foreign the license fee is 6 cents a share. If such corporations are subject to business franchise tax, the shares will be assessed at actual value, but not less than \$5, instead of \$100 as formerly.

Rhode Island adds a provision to the corporation franchise tax law that non-par-value stock shall, for the purpose of the tax, be deemed to have a par value of \$100 a share.

West Virginia, by an unusual law, imposes a general sales tax of  $\frac{1}{4}$  of 1 per cent as a privilege tax upon the gross proceeds from the sale of manufactured products and from the sale of any other tangible property, the gross income of banks, trust companies and public utilities, and from "any gainful business or profession." This sales tax supersedes the former privilege taxes imposed upon all corporations and based upon net income. All sales up to \$10,000 are exempt.

*License Taxes on Specified Commodities and Tickets.* The evident need for more revenue to meet the increased cost of government causes seven states to tax gasoline, petroleum, cement, gypsum, coal and mineral ores. Connecticut leads the way with a tax of 1 cent a gallon upon gasoline used in motor vehicles and motor boats. Gasoline to be used commercially or for manufacturing purpose is exempt from tax; so also is the gasoline used to propel "road rollers, street sprinklers, fire engines, fire department apparatus, police patrol wagons, ambulances owned by municipalities or hospitals, agricultural tractors and vehicles which run on rails," exempt from tax. Distributors are required to make monthly report to the motor vehicle commissioner of the number of gallons sold and to pay the tax. Connecticut also enacts a new and elaborate law which imposes state taxes on tickets of admission to places of amusement.<sup>1</sup>

<sup>1</sup> These taxes are as follows: (1) Tax of  $\frac{1}{4}$  of 1 cent for each 10 cents or fraction thereof paid for admission to any place after September 1, 1921; same rate to be paid by any person admitted free or at reduced rates, except employees, municipal officers on official business and persons in the military or naval uniform and children under 12. (2) Upon tickets to theatres when sold at news stands, hotels and places other than the theatre ticket office at not to exceed 25 cents in excess of the price at the theatre ticket office, a tax of  $2\frac{1}{4}$  per cent on such excess and if sold for more than 25 cents in excess of the price at the theatre ticket office, a tax equal to 25 per cent of the total excess. (3) A tax of 25 per cent on tickets sold by the management of the theatre in excess of the regular charge. All such taxes being additional to those paid by the purchaser. (4) Persons having permanent use of boxes or seats in any theatre shall

Georgia makes provision for a gasoline tax of 1 cent a gallon and requires quarterly payments of such tax to the comptroller general. Gasoline imported and sold in original packages is exempted.

Minnesota provides that persons engaged in the business of mining iron or other ores shall, in addition to all other taxes, pay an annual occupation tax equal to 6 per cent of the value of all ores mined. Methods outlined for obtaining the valuation of such ores and annual reports to be made to state tax commission. The tax is for state purposes.

Montana requires an annual license tax of \$1 and a further license tax on the mining of metals equal to  $1\frac{1}{2}$  per cent of the net proceeds; on the mining of coal equal to 5 cents a ton for all coal mined; retail coal dealers to pay a license tax of \$1 and an additional tax of 5 cents a ton for coal sold but excluding coal mined in the state for which a license tax has been received. This state also provides for a license tax on oil producers equal to 1 per cent of the gross value of oil produced. A license tax is also provided on both wholesale and retail dealers in gasoline and distillate equal to 1 cent per gallon for all gasoline and distillate sold; the retail dealer not required to pay the tax if wholesale dealer has paid.  $66\frac{2}{3}$  per cent of the proceeds of this tax goes to the state and  $33\frac{1}{3}$  per cent to the counties. The latter amount shall be in proportion to the total number of teaching positions in each county. Montana also imposes an annual license tax of \$1 and a further license tax on manufacturers of cement and gypsum equal to 4 cents a barrel for cement and 20 cents a ton for gypsum; the same tax is laid on retail cement dealers but exempts cement and plaster manufactured in the state and upon which a license tax has been paid. The proceeds of the tax on oil, cement and gypsum goes to the state.

pay in lieu of the tax of  $\frac{1}{4}$  of 1 cent for each 10 cents, a tax of 5 per cent of the amount for which such box or seat is sold for each performance. (5) A tax of  $\frac{1}{4}$  of 1 cent for each 10 cents or fraction thereof paid for admission to any roof garden, cabaret, or like place when such admission charge is wholly or or in part included in the price paid for refreshment or service. Amount paid for admission to be deemed 10 per cent of the amount paid for refreshment or service. Person paying for such refreshment or service to pay the tax. Exemption from this tax granted religious, charitable and educational institutions, military organization, societies for the prevention of cruelty to children or animals, musical organizations not for the profit of members and agricultural fairs. Every person paying the federal tax on admission shall pay an amount equal to 50 per cent of such federal tax. If such amount is paid the tax imposed by this act shall not apply. Proceeds of tax shall be divided one-half to the state and one-half to the counties.

New Mexico provides for the division of the mineral property in the state into three classes for purposes of taxation. The first class, mineral lands held by private owners, is to be further classified into either productive or nonproductive. Definite methods of valuation of such properties are outlined. This law withdraws all mineral property from assessment by local officers and gives the tax commission broad powers and authority to employ valuation engineers. New Mexico also enacts a law which is both retroactive and prospective in its provisions. An excise tax of 2 cents is imposed upon each gallon of gasoline sold in the state from March 17, 1919, to and including the date upon which the act takes effect and an excise tax of 1 cent, formerly 2 cents, per gallon thereafter. Gasoline brought into the state and sold in the original package is exempt from taxation. Each distributor of gasoline is to pay an annual license tax of \$25, formerly \$50, for each distributing station, places of business or agency, and the proceeds of the tax are to be for the use of the road fund, except \$15,000 for a fish hatchery.

Pennsylvania imposes a tax of 1 cent a gallon or fraction thereof on all gasoline sold for any purpose whatsoever except resale. The tax is to be collected from the consumer by the selling firm. 50 per cent of the tax collected is to be credited to the various counties to be used for the construction, maintenance and repair of roads and for payment of interest on bonds issued for road purposes. Pennsylvania also provides for the imposition of a tax of  $1\frac{1}{2}$  per cent on each ton of anthracite coal mined and prepared for market in the state. The superintendent in charge of the mine is to make an annual report to the auditor-general showing the gross tons taxable and the assessed value. The provision of the old law which prohibited the owner adding to the selling price of the coal in order to cover the tax or more than the amount of the tax is stricken out of the new law.

West Virginia by a new law imposes a general sales tax of two-fifths of 1 per cent as a privilege tax upon the gross proceeds from the sale of coal, oil, natural gas and other mineral products. The sales tax supersedes the existing privilege tax. All sales up to \$10,000 are exempt from taxation.

*Intangible Property.* Michigan, by a law which relates to the assessment of credits, provides that consideration must be given to the investment of the taxpayer in non-taxable credits, so that no longer will it be assumed that the entire indebtedness of the taxpayer is invested in taxable credits, but that, at least, a proportionate part is in non-taxable credits.



Missouri amends the "secured debts" law by bringing within its provisions notes, bonds, debentures and similar obligations for the payment of money secured by mortgage upon real estate and by providing that the state taxes thereon may be discharged in full by paying the recorder the prescribed tax at the time of filing the instrument for record.

Nebraska, in a new law, provides for a classification of intangibles and their taxation in the locality where listed, on the basis of 25 per cent of the mill rate levies upon tangible property. Bonds and warrants or other evidences of indebtedness of the state or its governmental subdivisions are to be listed and taxed at 1 mill upon the dollar of their actual value. This 1 mill tax and the 25 per cent above noted are to be in lieu of all other taxes upon such intangibles.

*Assessments.* Michigan, Nebraska and New Jersey provide for a reassessment by the state board of any local assessing district in case of any undervaluations by the local officers. In Michigan, the reassessment is to be made only if the state board, in its review, makes a change of more than 15 per cent above or below the amount approved by the local board. In Michigan all expenses of such reassessment are to be paid by the district reviewed; in Nebraska the state pays the expenses in the first instance and later is reimbursed by the county. In the case of New Jersey the state stands the expense. The purpose of laying the expense of the reassessment upon the local unit is to bring about better assessments. Michigan also provides that forest products left on the shores of any lake or stream for more than six months shall not be deemed in transit but shall be assessed.

Minnesota by a new law requires warehouse men to list for purposes of taxation all goods in storage. The assessor is authorized to enter a warehouse to list such property. Nebraska makes an important change by providing that "all property, not exempt, shall be valued and assessed at its actual value." The previous law required that "all property be valued at actual value and assessed at 20 per cent of such actual value."

North Dakota provides a county option law for the purpose of enabling each county board, upon petition of 50 per cent of the resident freeholders, to compile a schedule and classification of all acre property to be used by the assessors in listing and assessing taxable property. Oregon requires that an assessment upon lands reduced in value by the logging off, or removal of timber, shall be a personal debt against the owner and before any timber is removed the taxes shall be paid.

*Poll Tax.* California, in harmony with the new constitutional amendment, enacts an alien poll tax of \$10 upon all alien males in the state between the ages of twenty-one and sixty years. Certain defectives are exempt from the tax.

Iowa reduces the poll tax, outside of municipalities, from \$6 to \$5 and authorizes the township trustees to permit the working out of the tax by two days labor in lieu of a money payment. Municipalities are authorized to require payment of a poll tax of not to exceed \$5; the tax was formerly \$1.50.

Rhode Island extends the poll tax law to include women and increases the previous tax of \$1 to \$5. Vermont provides that the poll tax shall apply to both men and women and lowers the previous rate of \$2 to \$1.

Washington adopts a new method in imposing a poll tax. The rate of the tax is \$5, four-fifths of which goes to the state and one-fifth to the county. Employers are required to deduct the tax from the wages of employees who fail to pay the tax and the employer, for failure to so do, becomes directly liable. The tax is made a lien upon the real and personal property of the taxpayer. Jurors and witnesses are required to exhibit receipts showing payment of such tax before receiving their fees.

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**Budgetary Legislation in 1921.** There have been no unusual developments in budget making during 1921; the three new states adopting the system, Indiana, Missouri, and Florida, have followed the established patterns. The tendency toward centralization of responsibility in the governor is evident in the increased supervision over finances in almost every law. Reluctance, however, to give him any real power over various items is obvious in the provisions which require the legislature to consider his recommendations, but do not compel it to abide by his findings. In Nevada the legislature has not been permitted to increase the governor's recommendations but may reject or decrease any item. In the 1921 session, this provision was repealed, making the budget advisory only. Again in Indiana, a constitutional amendment, submitted to the people in September, 1921, empowering the governor to veto items of an appropriation bill, was defeated by a majority of 18,525. On the other hand, the new constitution of Nebraska contains, in the article establishing an executive budget, a

clause permitting increases of items over the governor's recommendation only by a three-fifths, majority vote of each house, and takes from the governor the power of vetoing items so increased. As a result of the adoption of this constitution, all former budget laws have been repealed and a new one enacted. The budget is compiled in the department of finance from estimates submitted by all departments and institutions; after investigation and hearings the director of the department may recommend changes; the budget is then submitted to the governor who may investigate further and change any item. The three-fifths majority clause is incorporated into the law. Closer than usual is the control over expenditures here provided for. The department may investigate at any time as to whether appropriations are being economically used. Before any money becomes available quarterly estimates must be approved by the governor.

*Administrative Reorganization.* The new administrative code of Ohio provides for a department of finance as one of the eight departments created thereby, with a head appointed by the governor with consent of the senate: the department is in charge of all financial transactions except those of the legislature and judiciary, and compiles the budget from estimates submitted. A division of purchase and printing as well as a division of budget is included in the organization of the department.

A similar reorganization in Washington has resulted in the departments with heads appointed by the governor and the senate, and nine ex-officio administrative committees, the budget being prepared by the finance committee and the department of efficiency. The department is empowered to survey all public offices and institutions with a view to their more economical administration and is instructed to compile daily expenditures of these departments from which the basic statement for the budget is prepared. The budget is referred to the finance committee (formerly called board of finance) composed of the governor, the treasurer and the auditor. Their duties relating to the budget have been unchanged. The important feature in the new system is the further concentration of power in the hands of the governor.

*New Laws.* Of the five states to enact new laws for budget systems, the experience is new in Indiana, Missouri and Florida. Missouri has created a department of budget which in addition to the compilation of the budget has the duties of the former tax commissioner and has supervision over purchasing and printing. The department is headed by a commissioner of budget appointed by the governor and the senate.

It is divided into two bureaus: a bureau of purchase, having control over state printing as well as purchasing done by nonelective state officers and departments, and a bureau of taxation and estimate. In compiling the budget, the commissioner is empowered to investigate the organization of departments and make recommendations for more efficient administration. Requests from each office are submitted unaltered by him to the governor together with his own estimates. The governor then submits to the legislature the budget embracing these recommendations.

Florida has passed an act creating a budget commission and establishing a budget system for all state expenditures.

For the last two sessions of its legislature, Delaware has had an executive budget. A joint resolution in 1917, provided that the appropriations for that year be made according to a plan outlined in the resolution. The same method was followed in 1919 but without legal authority. In 1921, the features were embodied in a law, the essential points of which follow: Estimates are submitted directly to the governor by all departments. These are subject to his revision except those submitted by the legislature and judiciary. After public hearings the governor may revise the estimates giving reasons for his revision, which are submitted to the general assembly with the printed budget. Hearings and revision take place before the legislative appropriation committees, where all items may be revised except those relating to state debt. The legislature is not permitted to consider any appropriation measure until the budget is passed and must give it precedence over all other legislation after the fiftieth legislative day.

The fourth new law is in Indiana. The constitutional amendment establishing a budget system, passed in 1919 and referred to the 1921 legislature for reconsideration, was not repassed, but in its place a law was enacted. The method adopted provides for the preparation of the budget by the state examiner of the state board of accounts, an office already in existence, filled by an appointee of the governor. Requests of the various departments are filed with him from which he compiles the budget for submission to the governor, containing the requests and his recommendations on each item.

In New York the executive budget has been abolished and a new board of estimate and control created. This board is composed of the governor, the chairmen of the two legislative appropriation committees and the comptroller. The budget of the legislative budget committee which has been in existence since 1916 is continued. Requests for

appropriations are addressed by the departments to both the new board and the old committee and both bodies compile from them their estimates of necessary appropriations. The new board is given great authority over the administration of departments. It is empowered to investigate and to compel changes in the organization of work, unless statutory provisions prevent it, which in its opinion will make for greater efficiency. In the light of this investigation the board's budget will be compiled and submitted to the budget committee which is supposed to consider it in its final report. In addition to budgetary duties the board has power over state purchasing and printing and the disposition of personal property of the state. The board received a lump sum appropriation for its activities and all its employees are exempt from civil service rules.

*Budget Law Amendments.* New Mexico has included existing budget provisions in the recodification of its tax laws. The same provisions with the power of the legislature to increase items curtailed will be submitted this fall as a constitutional amendment.

In Idaho a bureau of budget and taxation in the governor's office assumes the duties of the department of finance thus bringing all procedure more directly into the hands of the governor although the commissioner of finance is also appointed by the governor. Power of investigation as to efficiency is given to this new budget bureau.

California has a new department of finance with a division of budgets and accounts which prepares a budget without definite legal authority. The final approval lies with the established board of control, a board of three appointed by the governor, which is made the head of the department of finance.

Utah also has a department of finance supervising financial activities and state purchasing. The head of this department is appointed by the governor. Among its duties is the preparation of a biennial budget for submission to the governor. Details of preparation are omitted from the law. The board has close control over department expenditures.

Michigan has transferred existing budget powers from the budget commission, which is abolished, to a state administrative board composed of the governor, the secretary of state, the treasurer, the auditor-general, the attorney-general, the highway commissioner and the superintendent of public instruction. In addition to budgetary duties the new board has a supervisory control over all administrative departments, purchasing and state construction.

The Oregon budget formerly prepared by the secretary of state is now given to the state board of control composed of the governor as chairman, the secretary of state and the treasurer. The actual work of compilation remains with the secretary of state but the recommendations on items are made by majority vote of the board. It is only an advisory document when printed.

Among the minor changes in the various states, that of North Carolina is most interesting and unusual. It gives to the minority party a representative on the budget board. The board now consists of the governor, the chairman of the legislative finance committees and a member of the minority party, a legislator, appointed by the governor.

Minutes of the South Dakota budget board until now have been open to public inspection at all times. By a 1921 law they need not be made accessible until after the budget has been transmitted to the legislature. The same law provides for meetings of the board before special sessions of the legislature and at the governor's call. Montana's amendment gives more power to the compiling board, permitting it to include its recommendations in its budget instead of being a mere compilation of requests as before.

*Local Budgets.* Both county and city finances have received some attention. A system of commission manager government for Wyoming cities of over 1000 population has been established, including an itemized budget compiled in the department of finance for guidance of the commission in its appropriations. Publication of the commission's appropriation bill with a parallel comparison with the preliminary estimates gives the necessary publicity. Kansas requires boards of education in cities over 95,000 to prepare an itemized budget before making tax levies and requires expenditures to be as defined in the budget.

Oregon has passed a comprehensive local budget law requiring the preparation of a budget by all municipal corporations, meaning all public corporations having power to levy taxes. The itemized budgets contain the estimated revenue as well as the estimated expenditures, and form the basis of the tax levy. The preparation of the budget is done by budget committees, the same size as the local levying boards, composed of citizens not employed by any municipal corporation. Publicity is provided and public hearings are permitted.

Nevada, already requiring budgets from cities and most of the tax-levying bodies within the state, has added county high school and educational districts to the number.

In addition to Oregon which includes counties in its local budget law, New Mexico, Montana and Arizona have strengthened their county finances by requiring budgets. County commissioners of New Mexico are required to submit budgets to the state tax commission which is authorized to investigate and revise all items. When finally approved, the budget is returned to the county commissioners and is binding on them in all instances. County commissioners are also compelled to make preliminary estimates for the expenditures of road and bridge funds to assure a fair distribution in all parts of the county. County officers of Montana are required to submit their estimates of expenditures, and at an advertised time the board of county commissioners revise and approve the estimates, giving opportunity for hearing to all interested people. Expenditures are limited by this budget, as finally approved.

RUTH MONTGOMERY.

*Legislative Reference Section,  
New York State Library.*

## NOTES ON MUNICIPAL AFFAIRS

EDITED BY F. W. COKER

*Ohio State University*

**The New York City Election.** Four years ago on January 1, John F. Hylan became mayor of New York City, having overwhelmingly defeated Mayor John Purroy Mitchel, candidate for reelection on the fusion ticket. Mayor Mitchel was known throughout the country as the man who had given New York an honest and efficient administration; he received during his campaign the cordial support of the great newspapers with the exception of those under Mr. Hearst's control; hence it was but natural that the people of the country in general, and editors of newspapers and magazines in particular, should shake their heads dubiously when the voters of our largest city decisively rejected Mitchel in favor of Hylan, protégé of Hearst and candidate of Tammany Hall. Was it possible to retain faith in popular government in the face of a result such as this?

Naturally, Mr. Hylan's administration was closely watched by many voters of the city who expected to find not only inefficiency but also gross corruption. The newspapers remained generally hostile to the mayor. When he was not ridiculed and pictured as a bungler he was accused of sinister purposes. His appointments were often condemned. It was said that he appointed Tammany politicians and personal friends to office. Of course in doing so he was merely following a well-established American custom.

New York, like many other cities, has had considerable difficulty in its dealings with public utility corporations. When the war came prices rose enormously. Transportation companies, formerly paying large dividends, now confronted with rising costs, made demands for increased fares. The mayor and his colleagues rejected all such proposals. They were blamed for failure to work out definite plans for the solution of the transportation problem and were frequently called obstructionists. The fact remains, however, that while in many cities car fares were increased and in some doubled, in New York the fare is still five cents. The great majority of the people believe that the mayor's stand is responsible for this.



In the 1920 election Harding carried New York by a majority of more than 1,000,000. He even carried New York City by a majority of 439,000. Naturally Republicans were enthusiastic. It was confidently asserted that the time had come for a straight Republican ticket in the 1921 mayoralty election. The fact that Governor Miller's plurality over Alfred E. Smith was less than 75,000 in the state, and that Smith had carried the city by more than 320,000, was for the time being overlooked. Before long, however, it was realized that the chances of defeating Hylan depended upon a sincere coalition of Republicans and independent Democrats.

The 1921 legislature, overwhelmingly Republican and extraordinarily submissive to Governor Miller's leadership, made the reelection of Mayor Hylan a practical certainty. Two measures especially strengthened the position of the mayor. The public service commissions were reorganized and a state-appointed transit commission with complete authority over the subject of transit in New York City was established. Secondly, provision was made for a legislative committee to investigate the conduct of the Hylan administration. The transit law was attacked by the city administration and by local Republican leaders because it practically deprived the city of all control over its transportation system and because it was believed to pave the way for an increase in fare.

The transit commission at once began a thorough investigation of its problem and on September 30 issued a preliminary report recommending a plan for municipal ownership of all railway lines in the city, payment for the property to be made on the basis of an honest valuation irrespective of the present capitalization and book values. Fares were to be based on the actual cost of operation, and there was to be no increase unless operation under the new conditions should demonstrate its necessity. Upon the full establishment of the plan, the transit commission was to be abolished.

These proposals of the commission were at once attacked by the city administration though they were quite generally approved by the press. The comptroller saw in the plan only one good provision—that for the abolition of the transit commission, which he thought, however, should be put into effect at once. The mayor's commissioner of accounts detected a scheme for unloading on the city worthless lines and for an eventual eight or ten cent fare. It was also claimed that the issuance of the report a few weeks before the election was designed to fool the people into the belief that the commission was in favor of the five cent fare and thus to weaken the mayor's chief campaign issue.

The legislative investigating committee, headed by Senator Meyer, did not succeed in convincing the public that the Hylan administration was very corrupt and inefficient. On the contrary it did convince the people that its chief purpose was to produce campaign material and to "get Hylan" at any cost. Although the committee's examination of city officials brought to light some things which did not tend to increase public confidence in the management of certain city departments, yet its methods were so apparently partisan that the investigation proved a boomerang and undoubtedly strengthened the mayor with the voters.

The municipal primary elections were held on September 13. In the Democratic primary Mayor Hylan and Comptroller Craig were renominated without opposition. Murray Hulburt, commissioner of docks, was nominated without opposition as president of the board of aldermen. The only serious contest was that for the position as president of the borough of Manhattan. The central Tammany organization was successful, though its majority was small.

After numerous conferences during the summer months Henry H. Curran, president of the borough of Manhattan, was endorsed for mayor by the Republicans and various independent groups desirous of fusion against Tammany. Senator Charles C. Lockwood and Vincent Gilroy, an independent Democrat, were endorsed for comptroller and president of the board of aldermen. These three candidates won in the Republican primaries by handsome pluralities. The vote in the mayoralty contest stood as follows: Curran, 103,174; LaGuardia, president of the board of aldermen, 37,880; Haskell, anti-prohibition candidate, 29,468; Bennett, ex-senator, 4742. Lockwood and Gilroy received pluralities even larger than Curran's.

From the very beginning of the campaign it was clear that the odds were in favor of Hylan. He was loyally supported by Tammany Hall. This insured the advantage of perfect organization. The mayor and his supporters made much of their stand against corporation influence, always a popular position. Governor Miller and the transit commission were pictured as tools of sinister interests seeking to impose on the people of the city millions through increased fares; and Mr. Curran, despite his vigorous denials, was made to appear the agent of the governor seeking to deprive the city of its last vestige of control over an important public utility. The Meyer committee, called the "Mire committee" by the Mayor's friends, was accused of persecuting the administration for partisan purposes. The Hearst papers exerted a

powerful influence in the mayor's behalf. Every day their columns carried laudation of "John Faithful," "the people's mayor," and scathing satire of his opponent, effectively labelled "the Subway Son."

The Republican-Coalition groups entered the campaign with serious handicaps. Some Republican leaders had favored a straight party contest, and after the election was over serious complaints were made against the regular organization for its alleged lukewarmness toward coalition. Nor did the Coalition candidates arouse much public enthusiasm. Mr. Curran proved himself a far from brilliant campaigner. He strove manfully to convince the people that he also was for a five cent fare, but to many this seemed like trying to steal Hylan's issue. He attacked the mayor for not having actually retained the five cent fare since certain transfer privileges were abolished. This fell flat. On the whole Mr. Curran's position on the transit issue was exceedingly awkward. He was also greatly embarrassed by the fact that the people thought him the governor's choice for mayor. This alone would have been enough to defeat him. Curran was strongly supported by such important newspapers as the *Times*, the *World*, the *Tribune*, the *Herald*, the *Evening World*, the *Evening Post*, the *Sun*, and the *Telegram*.

The election resulted in an overwhelming victory for the mayor and the Democratic ticket generally. Every single member of the newly elected board of estimate and apportionment, the city's actual governing authority, is a Democrat. Hylan's plurality was almost 418,000. The vote for mayor stood as follows: Curran, Republican-Coalition, 336,888; Hylan, Democrat, 754,874; Panken, Socialist, 83,209. Comptroller Craig's plurality was 249,252. Hulburt was elected president of the board of aldermen by a plurality of 268,728. The Democrats gained also fourteen seats in the board of aldermen, which will have fifty Democratic and fifteen Republican members.

There is little doubt that the five cent fare issue was the greatest single factor in determining the result of the election. The voters were unalterably opposed to an increase in fare. Moreover they believed that the mayor's firm stand against such increase was the reason for the present five cent fare. Whether the mayor's stand was based on a conviction that the five cent fare was sufficient or that it was the best way to secure votes did not seriously concern them. Whatever his motives were, he had done what they wanted done. After the election was over even traction officials stated that they considered the vote a decided rejection of their arguments for more than the present

fare. Rightly or wrongly, the masses of the voters hailed the re-election of Hylan as their victory over the "upper classes."

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**The Cleveland Election and the New Charter.** The Cleveland municipal election of November 8, 1921, will likely go down in history as one of the most notable in American annals. The big issue of the election was the charter amendment embodying the manager plan with a council elected by proportional representation; but in addition to this the voters were obliged to elect a mayor from a field of seven candidates by use of the preferential ballot, to choose a chief justice and four judges of the municipal court, to select four members of the board of education, to elect a councilman in each ward, to vote on the issuance of bonds for the construction of a public library building, and a jail and criminal courts building, and to vote upon three proposed amendments to the state constitution. Only the manager amendment and the mayoralty contest possess other than local interest.

The amendment providing for the manager plan was placed on the ballot by initiative petition, which was inaugurated by a committee of citizens representing various civic and commercial bodies. The willingness with which all classes of people signed this petition, and the slight difficulty experienced in procuring a sufficient number of signatures, should have been a portent of the outcome of the election. But the opponents of the amendment were so confident of its failure and the proponents were so uncertain of their strength, that the possibility of its success was not seriously contemplated by either side until near the end of the campaign; and when it carried by a majority of almost twenty thousand there was universal surprise. The factors which contributed to the victory of the amendment were numerous and complex, but not least among them were the disgusting politics of the mayoralty campaign and the incredible stupidity of the opponents of the manager plan.

Entirely apart from the way in which it was adopted, the manager amendment will command widespread interest among students of government. What the amendment actually does is to repeal all but the first two sections of the city charter and substitute for the repealed sections 187 new sections which in reality constitute a new charter for the city. So far as the writer knows, this is the first instance in our municipal history of complete charter revision by the use of the initiative. For this reason, the new charter is unique in another

particular. Since it was unnecessary for the charter to gain the approval of a charter commission, it is unaffected by the concessions to expediency and the compromises which are usually characteristic of the decisions of such a body. In its form and content it is largely the work of a single expert draftsman, and possesses, therefore, a degree of internal consistency which is rare in city charters.

The amendment provides for a council of twenty-five members, elected from four districts. These districts are entitled to elect to the council seven, five, six, and seven members respectively; and within each district the Hare system of election is to be used. The variation in the number of members from different districts is accounted for by the fact that they are unequal in population, the prime object in laying out the districts being social and economic homogeneity rather than equality of population. The council is obliged to choose a city manager as the chief executive of the city, and the provision reads that "he shall be chosen solely on the basis of his executive and administrative qualifications and need not when appointed be a resident of the city or state." It is provided also that no member of the council shall be chosen as city manager. The city manager is given power to make all appointments in the administrative service not otherwise provided for in the charter, and the council is expressly forbidden to interfere directly or indirectly with the appointments of the manager. Indeed it is provided that, except for the purpose of inquiry, the only way the council may deal with the administrative service is through the manager. While space does not permit a discussion of further details, it should be said in passing that there are exhaustive provisions relating to budget procedure, public utilities, civil service, and assessments for local improvements.

The amendment will become operative on January 1, 1924, and Cleveland will then become the nation's greatest experiment station for attacking the problem of efficient democracy. It is a good omen that the mayor who takes office on January 1, 1922, is known to be favorable to the manager plan and is determined to do all in his power to prepare the way for it.

The mayoralty election was a triumph for non-partisanship in municipal elections. The system of nominations by petition and preferential voting was incorporated in the Cleveland charter of 1913 for the purpose of fostering nonpartisanship, but until the election of 1921 it had precisely the opposite result. The party organizations soon discovered that although they could not nominate candidates

directly, they could endorse candidates nominated by petition and throw the whole force of the party organization behind such candidates. Furthermore it was discovered that the preferential-choice scheme could be turned to the advantage of the party by passing out the word to all regulars to vote only for a first choice. Thus the alternative votes of the independent voters would tend to build up the aggregate vote of the party candidates, but the regular party voters would contribute nothing to the aggregate vote of the independent candidates. As the field was likely to be divided between several candidates, the party candidates had by far the best chance to win. This explains perhaps why from 1913 to 1921 the "Mary Ann" ballot resulted in the election of not a single independent candidate for mayor.

In 1921 the same result was anticipated. There were seven candidates in the field. Two had been endorsed by the party organizations and were running frankly as organization candidates. Of the five independents, two were of Democratic antecedents and two were of Republican antecedents, while one stood as a Socialist. It looked as if the first choices of the independent voters would be widely scattered, and the organization candidates reap a correspondingly large share of their second and other choices. But the unexpected occurred. The voters repudiated both organization candidates, and gave Mr. Fred Kohler, an independent Republican, more first choice votes than any other candidate, though not the majority of first choices necessary for election on first choices alone. In fact it proved necessary to count the aggregate vote before an election could be declared, but the result was never in doubt because Mr. Kohler was in the lead all the way through. Mr. Kohler has been the center of so much controversy and publicity that he is easily the best known figure in Cleveland. Under the régime of Tom L. Johnson he became chief of police and achieved a national reputation for his successful administration of that office. He was continued in office under Mayor Newton D. Baker, but following charges of gross immorality and conduct unbecoming to an officer he was dismissed from the force. He thereupon entered politics to seek vindication and was a candidate for various offices, without success until 1918, when he was elected county commissioner. The exceptional majority by which he was reëlected to this office in 1920 undoubtedly encouraged him to enter the race for mayor. The election of Mr. Kohler to the office of mayor at this time is open to various interpretations. Despite the charges against the character of his private life, Mr. Kohler had achieved a reputation for being an honest,

efficient and independent public official, and he was the only independent candidate who was sufficiently well known to compete with the organization candidates. It is natural then that the people in repudiating both organizations should turn to Mr. Kohler.

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*Western Reserve University.*

**Elections in Other Cities.** In Boston, the mayoralty election (held December 13, 1921) resulted in a surprising upset. Ex-mayor James M. Curley (who was defeated for reelection four years ago by Mayor Peters—the “reform candidate”) was elected mayor, receiving a plurality of about 2700 votes over John R. Murphy—candidate of the Good Government Association. Two other candidates received relatively few votes. The campaign was exceedingly bitter. Mr. Curley was opposed by all except one of the Boston newspapers, and he had little public assistance from any of the recognized political leaders. At the same election three members of the city council were elected; of these two are supposed to be sympathetic with Mr. Curley, and the third successful candidate is one of the three candidates supported by the Good Government Association.

At the November, 1921, elections in Detroit Mayor James Couzens was reelected by a vote of nearly two to one. The vote is regarded as an unmistakable popular endorsement of the municipal ownership program of his administration; and at the same election the voters approved two charter amendments to facilitate the extension of the municipally owned street-railway lines.

In Indianapolis, Samuel L. Shank, Republican, was elected mayor by a large plurality. Despite the recently enacted law of Indiana making ineligible for state or city office any person who has been convicted of violating national law, both Terre Haute and Muncie elected as mayors men who had been convicted in the United States courts for offenses in connection with elections.

In Pittsburgh, William A. Magee, Republican, former state public service commissioner, was elected mayor by a large majority. In Scranton, Pa., a Democratic mayor was elected; and in Lancaster the Republican incumbent was defeated by a Democratic coalition candidate, this being the first defeat in 25 years suffered by the Republicans in Lancaster. In Schenectady, N. Y., Mayor George R. Lunn was reelected for a fourth term. In Louisville, a Republican was elected mayor again, despite the Democratic landslide in Kentucky. In

Bridgeport, Conn., Mayor Wilson, Republican, who has been mayor for ten years, was defeated by his Democratic opponent.

In Cincinnati, the Republicans won a sweeping victory. In Dayton, the independent candidates for the city commission defeated the Socialist candidates by about a three to one vote. In the municipal elections in Ohio generally, there were numerous women candidates. Over forty women were candidates for municipal offices (not including candidates for school boards) in Cleveland and its suburban municipalities; of these fourteen were successful, being elected to minor offices; all thirteen women candidates for the Cleveland council were defeated. In Cincinnati two women were elected to the city council; and women were elected as mayors in several small municipalities.

Some notable results also appeared in several up-state cities in New York. The city of Albany has long been considered the political preserve of William Barnes. For some twenty years the Republicans continuously managed the city. During the last few years, however, their administration was under fire. Serious fault was found with the department of assessments on the ground of alleged favoritism, and during the recent campaign this became one of the important issues. It was also claimed that corruption was rife in the making of city purchases, notably in the purchase of coal. The Republicans nominated for mayor William Van Rensselaer Erving, who for many years had been an officeholder under the Barnes régime. He had served as secretary of the municipal civil service commission, as commissioner of public safety, and as court reporter. The Democrats argued that this was sufficient evidence of his subserviency to Barnes. The Democratic candidate for mayor was William S. Hackett, president of one of the city's largest banks. The campaign was exceedingly bitter and full of personalities. The Democrats made an issue of the continued domination of the Barnes machine. The result of the election was a victory for the Democrats. Hackett was elected mayor by a majority of more than 7000, and the other Democratic candidates for city and county offices, by majorities ranging from 200 to 4000. The common council will also be Democratic.

In Syracuse, the home town of Governor Miller, the Republican ticket was defeated for the first time in fifteen years. The Governor actively participated in the contest in behalf of the Republican candidates. John H. Waldrath, Democrat, was elected mayor over DeForest Settle, Republican, by a plurality of about 7000.



Other important New York cities that elected Democratic mayors were Troy, Schenectady, and Yonkers. In thirty-seven mayoralty campaigns, Republicans were successful in twenty-two, and Democrats in fifteen.

Earlier in the year 1921, notable elections were held in St. Louis, Milwaukee, Chicago, and Minneapolis, besides the recall election in San Francisco. At the spring election in St. Louis, Mayor Henry W. Kiel was reelected for a third successive term of four years. He had won the Republican nomination in the primaries over Colonel Robert Burkham—head of the local American Legion—who was supported by the “reform” element of the party and by the leading Republican newspapers. In the election, the Democratic candidate had the support of the leading newspapers—Democratic and Republican of many leading Republicans of national reputation, and of the leading civic organizations of the city. In spite of this opposition Mayor Kiel won the election, although by a considerably smaller margin than in the election four years ago. At the same election in 1921, the “reform” element elected four of their five candidates for the board of education.

At the April election in Milwaukee, the Socialist candidates were defeated, with the exception of Mrs. Victor Berger, who was elected member of the school board. Emil Seidel, former Socialist mayor, was defeated for alderman-at-large by a nonpartisan candidate.

In Chicago, the biggest reverse which the Thompson-Lundin organization has yet received was that given in the judiciary election held in June. At that election the entire coalition ticket (supported by Democrats, Independents, and independent Republicans) was elected over the Republican (Thompson) ticket. The Thompson organization subsequently suffered another reverse in the defeat of their special municipal-ownership and traction-home-rule bills in the state legislature.

At the Minneapolis election in June, ex-Mayor Van Lear, Socialist, was defeated by Colonel George Leach—an overseas veteran and unofficial Republican candidate. Seven Socialist aldermen were elected. These, with the five hold-over Socialists, give that element a total of twelve out of the twenty-six aldermen.

An interesting small town election was that held in the spring in West Hartford, Conn., at which the Hare system of proportional representation was used for the first time in New England. The recently adopted charter of that town provides for a council of fifteen to be elected from four unequal districts, and allows each council to

fix the rules of election for the next subsequent election, the charter itself having prescribed the Hare system only for the first election. At this first election there were a total of thirty-two candidates for the fifteen seats. The election and counting were carried out without much confusion and the results seem to have fulfilled the hopes of the advocates of the Hare system.

In San Francisco, an election was held in the spring for the recall of two police court judges. The recall movement was the result of agitation by the local bar association and various civic organizations, following revelations by the grand jury implicating the two judges in various abuses connected with bond-broking and the manipulation of jury-picking. Following an exceptionally bitter campaign, in which organized labor joined with the forces opposing the recall, the election resulted in the defeat of the two judges by considerable majorities.

Another recall election in which the independent element was victorious over the machine element was that held in Wildwood, N. J., in July. The three members of the city commission were recalled, and independent candidates elected to their places by overwhelming majorities.

**Charter Revisions.** At the November, 1920, elections important charter changes were approved in Chicago, Minneapolis and San Francisco, and proposed changes were defeated in Boston and in Ashtabula, O. In Chicago the voters adopted by a large majority the amendment which will increase the number of wards from 35 to 50 and at the same time reduce the size of the council from 70 to 50 members by providing for one councilman, instead of two, for each ward. A beneficial effect of the amendment will come from the reapportionment made necessary by the amendment, which will have important political consequences by removing the glaring inequalities in population among the different wards such as have existed under the old apportionment.

In Minneapolis, the voters adopted the new charter, which, though not changing the previously existing form of government, gives to the voters of the city the power to change that form in the future without the sanction of the state legislature. A well planned movement has been set on foot to utilize this power and adopt a new charter changing the form of government. A large citizens' committee, representing over two hundred civic organizations, has been formed to conduct a campaign of investigation and education for the new charter.

In San Francisco twenty-six amendments were voted upon. Among those adopted, the following are the more important: making possible a system of pensions for city employees; providing for the selection of members of the school board through a system of nomination by the mayor and approval by the voters at the polls; authorizing the city administration to negotiate for the purchase of the United Railways—to be combined with the present municipal railway system, the plan of purchase not to be effective until approved by the voters.

In Boston, the proposed amendment providing for a council of fifteen elected by wards, to replace the council of nine elected at large, was decisively defeated; the proposed change had been generally supported by the political organizations and opposed by the independent civic organizations. In Ashtabula the amendment which would have abolished proportional representation and the city-manager feature was defeated by a comfortable majority.

In 1921 important steps were taken affecting the charters of Buffalo, Pittsburgh and Scranton, Columbus, New York, St. Paul, Omaha, Toledo and Cleveland, besides the various city-manager cities mentioned below. Commission government was saved for Buffalo by the veto of Mayor Buck. The state legislature had passed a bill to abolish the Buffalo commission form but was unable to pass the bill over the mayor's veto.

A proposed amendment to the Pennsylvania constitution, for restricted home rule for cities and authorizing optional laws for cities and boroughs, has been passed by the legislature, and will be voted on in 1922. This provides that: "Cities or cities of any particular class may be given the right and power to frame and adopt their own charters and to exercise the powers and authority of local self-government, subject however to such restrictions, limitations and regulations as may be imposed by the legislature. Laws also may be enacted affecting the organization and government of cities and boroughs which shall become effective in any city or borough only when submitted to the electors thereof and approved by a majority of those voting thereon."

The Pennsylvania legislature, having previously abolished non-partisan elections for cities of the third class, has now abolished them for cities of the second class—namely, Pittsburgh and Scranton. The latter act seems to be the result of the bitter factional struggle within the Republican party in Pennsylvania—the faction led by Governor Sproul opposed by the Oliver-Grundy faction; the latter faction, under the nonpartisan system, had displaced the old machine leader in

Pittsburgh. The governor's faction, which after a violent and dramatic fight wrested control of the legislature from the opposing group, retaliated upon the latter by enacting the measure which restores partisan elections in Pittsburgh.

The voters of Columbus, O., at an election held in August, defeated a proposed amendment to abolish the preferential ballot for the election of mayor, auditor and attorney.

Following several investigations and proposals from various quarters looking to a revision of the charter of New York City, the state legislature in 1921 passed an act providing for a commission to draft and submit to the legislature a new charter, the commission to be composed of fifteen residents of the city, including four officers of the city government—namely, the mayor, comptroller, one borough president, and one alderman. The commission is also authorized to prepare an administrative code supplementary to the charter, and is required to report not later than the legislative session of 1923.

The most important decision of the recent November elections was that made by the voters of Cleveland in adopting the charter revision providing for a city manager with a council elected by proportional representation. Cleveland is much the largest city to have adopted either of these features; the revision is described above.

In Toledo, at the November election, the voters defeated both of two alternative proposals for substituting a small council of seven for the present council of 20 members elected by wards; one proposal provided for election at large, the other for election by districts.

A new charter for St. Paul, drafted by a charter commission, was submitted to the voters on December 29. This proposed a complex scheme of organization with a large number of departments and several boards, in place of the commission plan. The new charter was defeated.

The legislature of Nebraska has passed a new charter for Omaha, revising the commission government of that city.

There are at present about 250 cities in the United States having the city-manager form of government. Six of these (Akron, Dayton, Grand Rapids, Nashville, Norfolk, and Houston) are cities of over 100,000 population. Among important cities which have recently adopted this form are the following: Long Beach, Pasadena, and Sacramento, Cal.; Colorado Springs; New London and Stratford, Conn.; Tampa and Miami, Fla.; Brunswick, Ga.; Michigan City, Ind.; Atchison, Kan.; Bay City, Mich.; Durham and Greensboro, N. C.; Lima, Cleveland Heights, Middletown, and Cleveland, O.; Carlisle, Pa.; Nashville, Tenn.; Houston, Tex.; Clarksburg and Morgantown, W. Va.

The Sacramento charter follows closely the model charter of the National Municipal League, and provides for a council of nine members elected under the Hare system of proportional representation; it is the largest city in the United States now operating under that system.

The Nashville charter supplies what orthodox advocates of the city-manager plan consider a mongrel form; it provides for a council of fifteen elected by wards, and for a mayor elected by the council for an indefinite term and serving both as titular mayor and as city manager, his appointments requiring confirmation by the council.

The city-manager plan has recently been rejected by the voters of New Haven, Conn., Canton, O., and Iowa City, Ia.

At an election in Kalamazoo, October, 1921, the proposed new charter providing a "federal" form to replace the city-manager form, was defeated by a comfortable majority.

In Missouri, an amendment to the state constitution was adopted in 1920 authorizing the submission to the voters of Kansas City of a charter closely similar to the model charter of the National Municipal League.

Several additional states have passed optional laws for the commission and city-manager forms of government. An Indiana law authorizes either commission or commission-manager forms. Texas authorizes commission government for cities of less than 5000; and New Mexico for cities of 3000 to 10,000. Arkansas provides for commission-manager government for cities of the second class with a population of 2500 to 3000; Missouri for cities of the third class; Illinois for cities and villages of less than 5000; and Wyoming for cities and towns over 1000. An optional city-manager law failed of passage in the New Jersey legislature.

Some progress is being made in the reform of county government in the direction of county home rule, county-city consolidation, and the county-manager form of government. The proposed county-manager charter for Baltimore county, Maryland, was defeated at the November, 1920, election. A board of freeholders has been elected to frame a charter for Sacramento county, California, the expectation being that a county-manager form will be submitted. The board of freeholders for Alameda county (including the cities of Oakland, Berkeley and Alameda, besides some rural territory) has submitted a charter providing for a board of seven elected by districts, and a manager to be chosen by this board; it leaves the district attorney, assessor and auditor elective, but consolidates other city and county offices

and functions under the board. In New York a constitutional amendment permitting the legislature to provide, subject to the approval of the respective counties, new forms of government for Nassau and Westchester counties (adjoining New York City) was adopted at the November, 1921, election. The legislature is authorized to provide for the transfer of town functions to the county governments in these counties. Two bulletins describing the conditions in these counties making reorganization necessary have been issued by the New York State Association. Petitions have recently been circulated in Michigan to secure the submission to the voters in November, 1922, of a proposed constitutional amendment providing for county home rule. Consolidation of city and county government under the manager plan has been proposed for Toledo in a report prepared by the Toledo chamber of commerce in coöperation with other civic organizations of that city.

**Municipal Transit Problems.** By far the most significant act of the past year in the regulation of municipal transit affairs is the law passed by the New York legislature for the control of the traction situation in New York City. It is a drastic and radical measure and has many important political, administrative and constitutional implications and consequences. The measure was passed under the frank and insistent leadership of Governor Miller (Republican) and was bitterly opposed by the New York City administration (Democratic) as well as by many New York City Republican representatives and leaders, and was strongly disapproved by the independent New York City Club. The constitutional requirement that laws applying to only one city must be submitted to the mayor of that city for approval or veto, was evaded by applying the law to "all cities containing a population of more than a million inhabitants." The law destroys, almost completely, local control of transportation in New York City. It creates a state commission of three members, appointed by the governor, and confers upon the commission practically all the powers formerly possessed by city agencies; the commission seems to be given about all the authority which the state, under its police power, could vest in an administrative agency. The commission has power to grant fare increases. It has the power to rewrite the contracts with the private companies for the operation of the city-owned subways, leaving to local agencies no limiting power in this connection; it can thus destroy all rights which the city now holds under existing contracts; on the other hand, the rights of the companies can not be modified except with the consent of the companies affected. The city retains the right to refuse assent

to new routes and to refuse the use of municipal credit for transit purposes.

The supporters of the measure defend it as a measure that will provide a strong agency to investigate and deal with conditions which demand forceful, fearless, comprehensive, expert direction, and on the ground that such results can be secured only by creating a unified agency endowed with broad powers, freed from interference by the city administration and from fear of local popular disfavor. The law is an extreme application of the legal theory of municipal governments as merely agencies and creatures of the state. It seems beyond question that the local unpopularity of the law contributed greatly to the sweeping victory of the Democrats in the November city election.

As members of the commission, the governor appointed the following well known men: George McAnenny, formerly president of the New York City board of aldermen, chairman; Major-general John F. O'Ryan; Leroy T. Harkness, a lawyer of Brooklyn, who had been connected with one of the two state public service commissions. The two first named are classed as Democrats, the last as Republican. In September, the commission issued its preliminary report embodying a tentative plan for combining all the city transportation facilities—now operated by about thirty companies—into three combined systems to be operated by three companies, with a fourth company to exercise financial control over the others; the city would be the legal owner of the properties; the present owners of the securities would receive bonds of the operating companies in exchange for their securities; the city would have no voice in the operating companies. On the board of control three members were to be appointed by the mayor, three by the investors and a chairman selected by the two groups.

The commission believed that substantial economies could be effected by consolidation and the elimination of numerous leasing and operating companies, with the duplication of overhead and separate traction policies and purchases.

The commission has more recently proposed plans for the expenditure of \$200,000,000 for new subways, including a moving platform to replace the present shuttle between Times Square and the Grand Central terminal; it suggested a one cent increase over the present five cent fare as a possible means of creating a working credit for the new construction.

In Detroit, at an election held last April, the voters rejected a service-at-cost proposal submitted by the Detroit United Railways and approved

a proposal for the city to buy twenty-five miles of additional trackage and to acquire and operate trackless trolley busses. The city is continuing to construct new tracks for the city-owned lines; and there are indications that the company is now preparing for an entire transfer of its properties to the city.

In Toledo the ten-year old controversy between the city and the street-railway company was brought to at least a temporary close by the result of the election in November, 1920. At that election the voters approved the grant of a service-at-cost franchise to the Community Traction Company—a newly formed corporation which takes over the street-railway holdings of the Toledo Railways and Light Company. The new franchise became operative February 1, 1921. The city's interests are in the hands of an unpaid commission acting through a paid street-railway commissioner. Under the terms of the franchise fares were immediately reduced from seven to six cents; but six months later the fares were restored to seven cents (retaining the one-cent charge for transfers), because of the decrease of the stabilizing fund to the point at which the rate increase is stipulated for in the franchise.

A supplement to the *National Municipal Review* for February, 1921, is devoted to the subject of "Service at Cost for Street Railways;" it contains articles on the Boston, Indianapolis, and Cleveland franchises, and an article on "Service at Cost versus Municipal Ownership."

In Cincinnati, the operation of the service-at-cost franchise adopted in 1918 has continued to produce successive rises in fares. The fare in June, 1921, had risen to nine cents, and the condition of the reserve fund indicated that further increases would be inevitable, under the conditions of the franchise. Thereupon the city council passed an ordinance providing that the overdue license fees for 1920 and 1921 are not to be paid unless in 1922 and thereafter the revenues produce a surplus therefor, that fares are not to be used to produce such a surplus, and that when the fare is over seven and one-half cents payments into the reserve fund are no longer required. This action was regarded as inspired by the desire of the party in power to escape the unpopularity which they feared might overwhelm them in the November election if further fare increases were not prevented.

In Seattle, where practically the entire street-railway system has been municipally owned and operated since April, 1919, the economic conditions have continued to be unfavorable to financially successful municipal operation. The investigation by the mayor indicated that, although there had been no corruption incident to the transactions



resulting in the purchase, a greatly excessive price had been paid by the city. The Seattle city council has recently, over the opposition of the mayor, voted to employ Peter Witt, former street railway commissioner of Cleveland, to make a survey of the municipal railway, and for a bond issue of \$680,000 for improvements and extensions of the system.

Two recent instances of the extension of municipal operation in the transit field are to be found in the taking over by the city of San Francisco of the temporary operation of a defunct steam railway serving certain industrial concerns in that city, and in the taking over by New York City of the temporary operation of the lines of a railway on Staten Island which the company, in the hands of a receiver, was proposing to discontinue. Grover H. Whalen, commissioner of plants and structures of New York City, recently testified before the state transit commission that the New York venture on Staten Island netted the city a profit of \$4800 for the first fiscal year, ending November 30.

Upon the expiration of the thirty-year franchise under which the Toronto Street Railway Company has operated, the Toronto city government, on September 1, 1921, took over the ownership and operation of the company's system, in accordance with an earlier vote of the people calling for that action.

The state public service commission of Pennsylvania has increased car fares in Philadelphia to seven cents, in violation of the franchise which provides that fares can be changed only by consent of both city and company. The power of the commission is supposed to be sustained by decisions of the Pennsylvania courts which hold that the commission may allow increases where rates agreed upon between a city and a company prove inadequate.

Kansas City, Mo., has passed an ordinance prohibiting the operation of jitneys on streets upon which electric railways operate.

In Minnesota a law has been passed authorizing street railways to exchange their franchises for indeterminate permits, to continue until the city buys the railroad property at a value fixed by the state railway and warehouse commission, or until modified or terminated by the legislature.

Kansas has again established a public utility commission, which was abolished by the industrial relations court law, and has transferred to the new commission all the powers and duties of the industrial relations court in regard to public utilities.

**Organizations and Publications.** In 1920 the National Municipal League and the American Civic Association entered into an agreement for close coöperation for one year, with the plan to consider complete consolidation if the coöperation proved successful. The *National Municipal Review* has been publishing the literature of the A. C. A. The *Review* has also, by agreement with the Government Research Conference, added a section, in its department of notes and events, devoted to the notes issued by the conference. These notes cover the activities of the various research bodies of the country. Mr. Henry M. Waite has been chosen president of the league, succeeding Charles E. Hughes, who resigned following his appointment as secretary of state. The *Review* has temporarily returned to a bimonthly, instead of a monthly, issue; on intervening months brief supplements devoted mainly to single subjects will be issued.

At the twenty-seventh annual meeting of the National Municipal League, held at Chicago in November, a session was devoted to the question, How should metropolitan centers be represented in the state legislature? Papers were read as follows: "Present restrictions on municipal representation," John M. Mathews, University of Illinois; "Is restriction fair?" Charles S. Cutting, Chicago; "Why cities menace the states," Lee Mighell, Aurora. Other sessions were devoted to the "financial plight" of our cities; the question whether city-manager government is applicable to our largest cities; criminal justice in American cities, with special reference to the Cleveland survey; the high cost of housing; and municipal zoning.

The 1921 meeting of the Government Research Conference was held in Philadelphia in June. Frederick Gruenberg, director of the Philadelphia bureau of municipal research, was elected president; R. E. Miles, director of the Ohio Institute of Public Efficiency, vice-president; and L. D. Upson, director of the Detroit bureau of governmental research, secretary-treasurer (reëlected). Mimeographed copies of the proceedings can be obtained from the secretary. The 1922 meeting of the conference will be held in Cleveland in June.

In September, 1921, a conference on the problems of counties and small towns was held at Chapel Hill, N. C., under the joint auspices of the University of North Carolina and the National Municipal League, with the coöperation of the North Carolina Municipal Association. The university has for several years, through the organization of local county study clubs and through coöperation with local officials and in other ways, made a very distinctive contribution to the study and treatment of the problems of small communities.

At the annual meeting of the American Country Life Association, held at New Orleans in November, a report on problems of rural government was presented by the committee on rural government and legislation. This considered the functions of rural government, rural areas, rural organization and rural citizenship.

The Philadelphia Forum has been established through the coöperative action of the University Extension Society, the Civic Club, the Academy of Music Corporation, and the City Clubs. The object of the institution is to provide opportunity for nonpartisan, nonsectarian discussion of public topics—national, state, and local, and for other events of civic and cultural interest. The program of the first season provides for seventy-five events, beginning October 1, 1921, and continuing for six months, to be held in the Academy of Music. A fee of \$10 is charged for the series. The Forum is under the control of a board of governors representative of the organizations which participated in its establishment.

The National Institute of Public Administration has been organized as successor to the Training School for Public Service formerly conducted in connection with the New York Bureau of Municipal Research. It takes over the training work of the school and the consulting and research activities of the bureau, which has passed out of existence. The offices of the bureau are at 261 Broadway.

The Institute for Public Service in New York City has extended its educational activities by affiliating with the National School Digest, and now maintains a permanent exhibit of educational material at its new offices, 115th Street and Amsterdam Avenue.

The thirteenth National Conference on City Planning was held in Pittsburgh, May, 1921.

A notable survey of the administration of criminal justice in Cleveland has recently been completed. The survey was conducted under the auspices of the Cleveland Foundation, and was directed by Dean Roscoe Pound and Professor Felix Frankfurter of the Harvard Law School. Associated with these two were Mr. Reginald Heber Smith and Mr. Herbert B. Ehrmann of the Boston bar, Mr. Alfred Bettman of the Cincinnati bar, Mr. Albert M. Kales of the Chicago bar, Mr. Herman A. Adler, state criminologist of Illinois, Mr. Burdette G. Lewis, state commissioner of institutions in New Jersey, Mr. Raymond B. Fosdick, well-known expert on police administration, Mr. M. K. Wisheart, a New York journalist, and the staff of the Cleveland Foundation. The study covers police administration, the criminal courts,

the prosecutor's office, correctional and penal treatment, medical science and criminal justice, newspapers and criminal justice, and legal education in Cleveland. The various sections of the study have been issued in separate volumes, but they are soon to be brought together in a single volume. The findings and recommendations of the survey are too voluminous to be reviewed in a brief note. The indictment of the archaic system of administering criminal justice in the large American city is unanswerable and the recommendations represent the matured judgment of the best authorities available. It is also noteworthy that a federation of social and civic agencies has been formed to follow up the survey, and to work toward the realization of its recommendations.

The Detroit bureau of governmental research has issued a mimeographed report on the operation of the new unified criminal court which was instituted in Detroit in April, 1920. The report shows that the new system has had a notable result in increasing the promptness with which cases are handled and in increasing the certainty of punishment; other improvements have been effected in dealing with special classes of offenders and in checking the practices of professional bondsmen. The Detroit bureau has also issued a pamphlet describing the organization and work of that bureau and discussing the functions of research organizations generally. During the 1921 session of the state legislature, the bureau issued a weekly bulletin reporting the activities of the legislature, including general measures and, in particular, measures affecting Detroit and Wayne county.

The Toledo Commission of Publicity and Efficiency has issued a report of a crime survey of Toledo (January 29, 1921), a survey of the work of the commission for the first five years of its existence (February 12, 1921), and a report on the Toledo municipal court covering the first three years of the existence of that court (February 26, 1921).

The Chicago City Club has been publishing in its weekly bulletin a series of articles describing other city clubs.

The Cleveland Year Book, 1921 (Mildred Chadsey, editor), issued by the Cleveland Foundation in the summer of 1921, gives a valuable comprehensive survey of the activities and problems of that city, each chapter being contributed by one or more specialists. The report is thorough and is both informative and critical.

The *Goldsboro Bulletin* is a new monthly issued by the city of Goldsboro, N. C. It is mailed free to residents of the city.

**Miscellaneous Items.** In April of last year, the United States Supreme Court handed down two decisions sustaining the constitutionality of the New York rent laws of 1920 and of the rent law of 1919 (the Ball act) for the District of Columbia; both of these acts established substantial limitations upon the rights of landlords to fix rents or eject tenants.<sup>1</sup> The court divided five to four in each of the two cases, Justice Holmes writing the majority opinion in each case. Justice Holmes held that circumstances had clothed the renting of dwellings with a public interest so great as to justify regulation by law; that our legislative bodies can not be deemed incompetent to meet the emergency in the way it has been met by most of the civilized countries of the world; that no impairment of the obligation of contract could be charged against the New York laws since contracts are made subject to the exercise of powers of the state when otherwise justified.

In February, 1921, the board of aldermen of New York City availed itself of a power conferred by one of the New York laws of 1920, by passing an ordinance exempting from local taxation for a period of ten years new buildings constructed exclusively for dwelling purposes. The ordinance grants exemption to the extent of \$1000 for each living room, the total exemption not to exceed \$5000 for each single house or separate apartment. The enactment of this ordinance was followed by a notable increase in the number of building permits for dwellings.

The city council of Baltimore has passed an ordinance authorizing tenants against whom ejectment proceedings have been brought to appeal to the city courts, and providing that if in the judgment of the justices of the court "such ejectment would be unfair and would work a hardship on the tenant and is solely for the purpose of profiteering or speculation, the said justices may refuse to grant a warrant of ejectment for a tenant holding over for a further period of not more than thirty days."

The legislature of Pennsylvania has passed a law authorizing the two second-class cities (Pittsburgh and Scranton) to adopt a system of separate assessments on land and improvements, respectively, so as to place the heavier burden of taxation on land.

The municipal rent commission of Denver has been successful in securing many reductions in rentals, generally by argument and persuasion rather than by invoking the restraining powers conferred upon it by law.

<sup>1</sup> These acts are described in the *American Political Science Review*, November, 1920, pp. 697-700.

A slight beginning was made by the Ohio legislature in 1921, in dealing with the notoriously bad financial situation of most Ohio cities, a situation due in part to the state law limiting the tax rate. One act of 1921 accords temporary relief by allowing taxing districts by popular vote to place their interest and sinking fund levies outside of the tax limitation; another act allows the districts, with a popular vote of 60 per cent of those voting, to suspend the tax limitation for a period of three years. A more important law is one designed to put an end to some of the short-sighted policies which some cities were adopting to meet current deficiencies in operating revenues; the cities would refund debts as they matured or would issue bonds to raise money for current expenses. To end these practices a law, sponsored by the Ohio Institute of Public Efficiency, was passed, which prohibits borrowing for current expenses or deficiencies, limits the duration of loans to the probable life of the assets acquired, lowers the limits of maximum indebtedness, and establishes the serial form of bonds.

The Minnesota legislature of 1921 passed a law authorizing any city or village in the state to levy a wheelage tax, with the provisos that the tax shall not exceed 20 per cent of the state motor vehicle tax and that no tax shall be levied on vehicles used for selling farm or garden products, where the owner or cultivator of the farm or garden is the owner of the vehicle.

The city council of Philadelphia has at last committed itself to the policy of city-wide municipal street cleaning beginning January 1, 1922, replacing the private-contract system for that work.

The social unit experiment in Cincinnati has finally been abandoned for lack of funds. It had been handicapped in part by the opposition from the mayor and his political associates.

The city councils of both Toledo and Columbus, O., have taken definite steps toward the establishment of civic centers for the grouping of their municipal buildings.

The New York legislature in 1921 passed a law providing for voting machines in New York City and cities of the second class.

The city of Jamestown, N. Y., has, with the approval of the voters, established a municipal milk plant for bottling, pasteurizing, and distributing milk.

**Special Legislation for New York Cities, 1914-1921.** The New York constitution of 1894 has a peculiar provision on the subject of special legislation for cities. The provision is as follows:<sup>1</sup>

"All cities are classified according to the latest state enumeration, as from time to time made, as follows: the first class includes all cities having a population of one hundred and seventy-five thousand or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities. Laws relating to the property, affairs of government of cities and several departments thereof, are divided into general and special laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of each city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the legislature at which such bill was passed has terminated, to the governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the legislature may provide for the concurrence of the legislative body in cities of the first class. The legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within fifteen days is not returned, it may nevertheless again be passed by both branches of the legislature, and it shall then be subject as are other bills to the action of the governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words 'accepted by the city', or 'cities' as the case may be; in every such law which is passed without

<sup>1</sup> Art. XII, sec. 2, pp. 201-3 of clerk's manual.

acceptance, by the words 'passed without the acceptance of the city' or 'cities', as the case may be."<sup>2</sup>

In order to discover what the effect of this suspensory veto power of the cities actually is, the following analysis has been made as to the fate of the special city bills, introduced in the state legislature from 1914 to 1921 inclusive:

	1914	1915	1916	1917	1918	1919	1920	1921	TOTAL
Bills passed both houses....	181	188	206	220	192	175	237	240	1639
Bills recalled from mayor (dead).....	—	3	—	1	—	—	—	—	4
Bills accepted by the city....	147	152	164	185	146	132	193	177	1296
Bills not accepted by the city	34	33	42	34	46	43	44	63	339
Bills passed by legislature over city's disapproval....	1	3	1	2	1	2	2	5	17
Bills passed by governor after city's disapproval; held not a city bill.....	—	—	1	2	3	—	—	1	7
Bills lost—"pocket vetoed" by city.....	33	26	38	25	38	36	42	54	292
Bills lost—"tabled" by legislature after disapproval of city.....	—	4	2	5	4	5	—	3	23
Governor's veto after protest of city and repassing by legislature (city bills)...	—	1	—	—	—	—	2	—	3
Bills enacted into law.....	133	144	163	172	135	119	187	161	1214
Governor's approval after protest of city (city bills)	1	2	1	2	1	2	—	5	14
Governor's veto after approval of city (city bills).....	15	10	3	17	14	15	6	22	102
Recalled from governor after acceptance by city (dead).	—	—	—	—	1	—	—	—	1

During the eight year period, 24 bills, or an average of 3 bills per session, were passed by the legislature over the city's protest. Of these, 21 bills, or an average of  $2\frac{5}{8}$  bills per session, were enacted into law. Deducting the 7 so-called noncity bills, 14, or an average of  $1\frac{3}{4}$  bills per session, were enacted into law.

During the same period, 318 bills, or an average of  $39\frac{3}{4}$  bills per session, were not enacted into law, after the city's protest. Thus  $22\frac{5}{7}$  times as many bills were not enacted into law after the protest of the city as were enacted.

<sup>2</sup> Amended by vote of people, Nov. 5, 1907.



Of a total of 339 bills not accepted by the city, 24 bills, or 7.08 per cent, were passed by the legislature over the city's protest. Of a total of 339 bills not accepted by the city, 21, or 6.2 per cent, were enacted into law. Deducting the 7 so-called noncity bills, 14 bills of a total of 332 city bills not accepted by the city, or 4.2 per cent, were enacted into law.

Therefore, the constitutional provision was from 92.92 per cent to 95.8 per cent effective in preventing hostile special legislation.

Of a total of 339 bills not accepted by the city, 7, or 2.07 per cent, were approved by the governor, after he had held that the bill was not a city bill. Of a total of 339 bills not accepted by the city, 17, or 5.01 per cent, were repassed by the legislature. Of a total of 339 bills not accepted by the city, 23, or 6.78 per cent, were tabled, an average of  $2\frac{1}{3}$  bills per session. Of a total of 339 bills not accepted by the city, 292, or 86.13 per cent, were pocket vetoed by the city; an average of  $36\frac{1}{3}$  bills per session.

Therefore, 12.7 times as many bills were pocket vetoed as were tabled.

Of a total of 1635 bills which the city considered, 339, or 20.73 per cent were not accepted by the city.

In discussing the effect of the suspensive veto of the city in the nineteen years following the adoption of the New York constitution of 1894, Professor Howard L. McBain finds that only 147 special acts relating to cities were passed over the heads of the cities affected.<sup>3</sup> According to the above investigation, there were 17 bills passed by the legislature over the disapproval of the city. However, 3 of these bills were vetoed by the governor, leaving 14 enacted into law. There were also 7 bills disapproved by the city, which the governor held were not city bills, and subsequently approved, causing them to become laws. This makes a total of 21 bills enacted into law, during the eight year period, without the consent of the city. Thus, since the adoption of this constitutional provision of 1894, there have been 171 bills—including the 7 so-called noncity bills, and the 3 bills subsequently vetoed by the governor, passed over the heads of the cities affected, or an average of  $6\frac{1}{3}$  bills per session. This compares with the average of  $7\frac{1}{3}$  bills per session for the first nineteen years.<sup>4</sup> The decreased average per session is quite pronounced in the last eight years, only 3 bills per session having been passed over the city's protest. Deducting the 3 bills vetoed by the governor, after having been repassed by the legisla-

<sup>3</sup> McBain, *The Law and the Practice of Municipal Home Rule*, p. 103.

<sup>4</sup> *Ibid.*

ture over the city's disapproval, the average shrinks to  $2\frac{1}{2}$  bills per session. Deducting the 7 so-called noncity bills, the average dwindles to  $1\frac{1}{4}$  bills per session. This would seem to bear out Professor McBain's observation that there has been a noticeable diminution in the number of bills thus enacted.<sup>5</sup>

Comparing the number of city bills enacted into law despite the city's protest, 14 (that is, deducting the 3 bills vetoed from the 17 passed by the legislature over the city's protest), with the number lost after the disapproval of the city, 318 (that is, adding the 292 bills pocket vetoed, the 23 bills tabled, and the 3 bills vetoed by the governor),  $22\frac{1}{2}$  times as many bills were not enacted into law after the protest of the city as were.

Comparing the total number of bills passed over the city's protest, 24, with the total number of bills not accepted by the city, 339, gives a percentage of only 7.08. Deducting the 3 bills vetoed by the governor, the percentage decreases to 6.2. Then eliminating the 7 so-called noncity bills, the percentage decreases to 4.2. Thus the suspensory veto power has been from 92.92 per cent to 95.8 per cent effective in preventing the evils of special legislation. It is evident, then, that the power is almost absolute.

It is significant, however, to note the fact that of the 318 bills not accepted by the city and subsequently lost, 3 were vetoed by the governor, 23 suffered the fate of being tabled, while 292 were pocket vetoed. In the case of the bills pocket vetoed, the legislature sent the bills to the city less than 15 days before the end of the session. As the city has 15 days for a public hearing upon the bill, its disapproval at the end of the 15 day limit could not be overruled by the legislature, since the legislature was then out of session. The 23 bills tabled were those which were returned disapproved by the city before the close of the session, and upon which the legislature either took no further action or which they definitely tabled. In other words, adding the 17 bills disapproved by the city which were subsequently repassed by the legislature and the 23 bills tabled, there were only 40 bills of the 339 disapproved by the city which the legislature had an opportunity to repass. The margin between 23 and 17, or between those which the legislature allowed to die and those it repassed, is certainly not a large one. Expressing the problem in percentages, we find that 5.01 per cent of the bills not accepted by the city were repassed by the legislature, while 6.78 per cent were tabled—a difference of only 1.77 per cent. On the other hand, 86.13 per cent of the bills not accepted by the city were

<sup>5</sup> H. L. McBain, *The Law and the Practice of Municipal Home Rule*, p. 103.

pocket vetoed—or a difference of 79.35 per cent between those pocket vetoed and those tabled. In other words, 12.7 times as many bills were pocket vetoed as were tabled.

The tendency in the legislative branches of our governments, in other states as well as in New York, to delay, for various reasons, the passage of many measures until near the close of the session, is notorious.<sup>6</sup> Also, the relatively longer procedure necessary in passing special city legislation after passage by both houses, transmission to the mayor, with a fifteen day period after his receipt of the bill, for a public hearing, and then the return to the legislature in case of disapproval, intensifies this difficulty of passing special city bills. The real effectiveness of the suspensory veto, therefore, has been due not so much to the hesitancy of the legislature to override the will of the city as it has been to conditions within the legislature, apart from its attitude towards city affairs.

Although Professor McBain points out that judicial controversy as to whether a bill is a city bill has been averted by the liberal practice of the legislature in submitting doubtful bills to the city or cities concerned, yet the governor may approve the bill, after holding that it is not a city bill. This power of the governor to override on his own accord the disapproval of the city is of course necessarily limited to those doubtful cases which, unfortunately, the constitution allows to arise by its vague definition of city laws as "laws relating to the property, affairs, or to the government of cities."<sup>7</sup> That this is not important relatively is shown by the small number of bills which have met this fate, only 7 out of a possible 339, or 2.07 per cent.

While it is obvious that the various cities have had a decided negative influence over their affairs, yet it is apparent that the suspensory veto is not the ideal solution for the difficult problem of the relationship of the state to the city. The division of the responsibility between the state and the city is especially noticeable in "claim bills," which in many cases would probably not be passed if either the state legislature or the mayor had to accept full responsibility.

There is also a possibility that the officials of the city are not truly representative on all bills involved. This is especially possible in the mayor-council plan, since in this plan the mayor's responsibility to the city is interrupted and discontinuous. This possibility, Professor McBain illustrates through the experience of the city of Buffalo in its

<sup>6</sup> Holcombe, *State Government in the United States*. New York City, 1916.

<sup>7</sup> Art. XII, sec. 2.

attempt to establish the commission form of government, despite the opposition of the mayor.<sup>8</sup>

Again, the evils of hostile special legislation have not been automatically removed. A considerable number of bills were passed by the legislature which the cities concerned considered as inimical to their interests. Out of a total of 1635 bills sent to the cities for their consideration (deducting the 4 bills recalled from the mayor from the 1639 bills passed by both houses) 339 were not accepted. In other words, 20.73 per cent, or over one-fifth of all bills which the cities considered, they deemed to be against their interests.

Summing up the results of the investigation: first, the suspensory veto power of the cities of New York has been almost completely effective in preventing hostile special legislation; second, the effectiveness of the suspensory veto power has been due, not to the hesitancy of the legislature to override the will of the city, but to conditions within the legislature, apart from its attitude on city affairs; and third, the suspensory veto power, although effective in a negative way, is not the ideal solution of the problem of the relationship of the state to the city, as there is the possibility of division of responsibility between state and city, as well as the possibility that the officials of the city are not representative of the city on a particular measure; while the fact that one-fifth of all the bills sent to the cities were not accepted by them indicates that the cities are compelled to be constantly on their guard against hostile special legislation.

It is important to note the remarkable consistency of the items year after year. It is evident from a study of the table that these conclusions are based not on a chance or erroneous combination or averaging of figures, but on actual conditions which seem to have acquired a relatively permanent character. They are as true for any year of the investigation as for an average or total of the eight.

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<sup>8</sup> McBain, *The Law and the Practice of Municipal Home Rule*, pp. 104-5, n. 1. Also S15 of 1914—Not accepted by the city, repassed by the legislature and approved by the governor. Here the obvious public opinion in Buffalo had a large part in crystallizing legislative sentiment so as to cause the legislature to override the mayor's veto.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

Professor W. W. Willoughby, of the Johns Hopkins University, has been on leave of absence, assisting the Chinese government in the preparation of its case before the Washington Conference on Far Eastern affairs.

Professor Clyde L. King, of the University of Pennsylvania, was engaged during the summer of 1921 as research expert for the joint congressional commission of agricultural inquiry. The report of the commission deals chiefly with the causes of agricultural depression.

The University of Michigan and the University of the Philippines have completed arrangements for an exchange of professors of political science. Maximo M. Kalaw, head of the department of political science in the latter institution, will give courses at Michigan during the academic year 1922-23, while Professor Ralston Hayden will do similar work at the University of the Philippines. Professor Hayden will leave for Manila in May, 1922. He will be away about fifteen months and expects to make a first-hand study of colonial government, not only in the Philippines, but also in the Japanese, French, Dutch, and British possessions. Professor Hayden will shortly publish a collection of the new European constitutions.

Professor H. E. Bolton, of the University of California, will take charge of Professor W. R. Shepherd's courses in Columbia University during the second semester. Professor Shepherd is on leave during the present year.

Professor Howard L. McBain, of Columbia University, has been appointed by Governor Miller a member of the commission for the revision of the New York City charter.

Dr. Julius Goebel, Jr., has been appointed lecturer in international law at Columbia University. He has taken over the courses formerly conducted by Mr. Henry F. Munro, now of Dalhousie University.

Dr. H. E. Yntema has been appointed lecturer in Roman law and comparative jurisprudence at Columbia University.

Professor Raymond G. Gettell, of Amherst College, will give courses in American government and foreign relations in the coming summer session of the University of California.

Dr. Charles H. Maxson, of the University of Pennsylvania, has been carrying on an investigation on unicameral legislation in the British-American provinces of Canada.

At the University of California, Dr. N. Wing Mah gives a course during the second semester on the contemporary politics and foreign relations of the Chinese republic. Next year Professor W. Popper will give a course on governments in the Near East, and Professor H. I. Priestley one on Hispanic-American institutions.

At an institute of efficiency in government, held at Chicago December 1-3 in conjunction with the first annual convention of the Illinois League of Women Voters, the laxness of men in voting was discussed by Professor Charles E. Merriam, of the University of Chicago; nominating processes, by Professor P. Orman Ray, of Northwestern University; and ballot forms and defects by Professors Ralston Hayden, of the University of Michigan, and A. R. Hatton, of Western Reserve University.

There has been established at Norwich University, within the department of political science, a bureau of municipal affairs which will hold itself ready to give assistance to the counties, cities, towns and villages of Vermont in the solution of problems peculiar to municipal corporations. The bureau will render this service in the following ways: (1) by giving information regarding community organization, town planning, and the administration of local government; (2) by publishing bulletins dealing with problems of government which are of current interest and distributing them to municipal officers, civic organizations, and libraries; (3) by encouraging the establishment of local town

reference bureaus; (4) by providing communities with speakers on governmental topics; (5) by holding local government conferences. The establishment of this bureau is a continuation of the work already done in this field by Norwich through the publication of the bulletins on poor relief and town planning. K. R. B. Flint, professor of political science, will be director of the bureau.

The National Convocation of Universities and Colleges on International Relations, including representatives of more than two hundred universities and colleges, met at Chicago, November 12, 13, and 14, 1921, to consider the problem of the limitation of armaments. As a result of this convocation, a permanent organization was formed, to be known as the National Student Committee for the Limitation of Armaments. Its purpose is to stimulate among college students an interest in the issues confronting the nations interested in the limitation of armaments; and to mobilize and make articulate student sentiment relative thereto. The movement had its inception at the Intercollegiate Conference on Reduction of Armaments called together at Princeton University on October 26. At this conference, delegates from thirty-nine colleges enthusiastically supported the project of reduction of armaments and advocated making a nation-wide appeal to college students. Among the resolutions adopted at the Chicago meeting is one of especial interest to teachers of political science. It was resolved that the "Convocation, aroused by the consideration of the great problems now under discussion at Washington, calls the attention of college and university officers and students to the necessity of providing more fully than do present courses of instruction in American educational institutions for an intelligent understanding of the problems of national and international life. To the end that present defects in these matters be corrected, it is urged that courses of instruction be provided which shall acquaint students in schools and colleges with the fundamental necessity of social coöperation and the disastrous consequences of the lack of international harmony and war."

**Annual Meeting.** The seventeenth annual meeting of the American Political Science Association was held at Pittsburgh, December 27-30, 1921. Eighty-six members registered, and the actual attendance may be estimated at somewhat more than one hundred. A number of members who would otherwise have been present were detained at Washington by duties connected with the Conference on the Limitation of Armaments. The American Economic Association, the American Sociological Society, the American Statistical Association, the American Association of Labor Legislation, the American Association of University Professors, and one or two smaller organizations were in session at Pittsburgh during the same week. Joint sessions were held with the Sociological Society and the Economic Association; and a smoker and buffet supper was tendered the members of all associations by the University of Pittsburgh and the Carnegie Institute of Technology. Arrangements for the meeting were very good; practically all persons on the program appeared; and it was generally felt that the meeting was one of the best in the history of the association.

The meeting opened on December 27 with a luncheon conference at which Professor W. B. Munro, of Harvard University, presented a report from the enlarged committee on instruction in political science created at the annual meeting of 1920. The report appears in full in the present issue of the *Review*. The report was discussed at some length by Professor Edgar Dawson of Hunter College, Professor Clyde L. King of the University of Pennsylvania, Professor B. F. Shambaugh of the University of Iowa, Dr. J. Lynn Barnard of the Pennsylvania Department of Public Instruction and others. As noted below, the association took steps to secure further consideration of the subject in coöperation with other organizations interested.

Two sessions were devoted to problems of state government. At the first, the principal address was given by Professor Charles E. Merriam, of the University of Chicago, on "Nominations and Primary Elections." At the second session on this general field, Professor John M. Mathews, of the University of Illinois, discussed the general principles which ought to be observed in reorganizing state administrative systems. This subject was discussed by several persons, including Professors Frank E. Horack of the University of Iowa, Frances W. Coker of Ohio State University, Arthur N. Holcombe of Harvard University, and John A. Fairlie of the University of Illinois.



At a joint session of the Political Science Association and the Sociological Society, Dr. Leo S. Rowe, president of the Political Science Association, spoke on "The Development of Democracy on the American Continent." Professor Edward C. Hayes, president of the Sociological Society, had as his subject "The Sociological Point of View."

At a luncheon conference on problems of college teaching of political science, Professor Raymond G. Gettell, of Amherst College, discussed the teaching of political science in colleges and explained methods in use in his institution; Professor Arnold B. Hall, of the University of Wisconsin, presented the results of a questionnaire on the teaching of constitutional law and discussed the policies and methods that should obtain in this branch of instruction; Professor J. S. Reeves, of the University of Michigan, described his method of teaching international law; and Mr. Frederick P. Gruenberg, director of the Philadelphia Bureau of Municipal Research, related the experiences of his institution with field work in the teaching of municipal government. His testimony was that field work for undergraduates has commonly been a failure, but that, on the other hand, it has usually been carried on very successfully and profitably by competent graduate students.

A session was given to the subject of centralization versus decentralization in the relation of the national government to the states. The principal address was delivered by Professor S. Gale Lowrie, of the University of Cincinnati, and the discussion was participated in by Professor James T. Young of the University of Pennsylvania, Professor Nathan Isaacs of the Pittsburgh Law School, Professor B. A. Arneson of Ohio Wesleyan University, Professor E. W. Crecraft of the Municipal University of Akron, and others.

At a session devoted to the general subject of the organization of political research, Professor W. W. McLaren, of Williams College, presented the tentative plans for the second session of the Institute of Politics, to be held during the summer of 1922, and Professor Charles E. Merriam, of the University of Chicago, described the need of improved facilities for research in political science and discussed various phases of the problem. As will be pointed out, a new committee on this subject, under the chairmanship of Professor Merriam, was created.

At a session on the general subject of foreign and comparative government, papers were presented as follows: "Ministerial Responsibility vs. the Separation of Powers," by Professor Charles G. Haines, of the University of Texas; "The Classification of Political Parties and the Relative Advantages of Two-Party and Multiple Party Systems,"

by Professor Robert C. Brooks, of Swarthmore College; "The Constitutions of Czechoslovakia, Poland, and Jugoslavia: a Comparative Study," by Professor Ralston Hayden, of the University of Michigan; and "The Political and Economic Relations of Ruthenia to Czechoslovakia," by Mr. Gregory I. Zatkovich of Pittsburgh. A paper by Dr. Frederick A. Cleveland, of Boston University, on "Readjustment of the Relations between the Executive and Legislative Branches of Government" was, in the absence of Dr. Cleveland, read by title.

The last evening session was devoted to a consideration of the conditions on which the United States should enter a world organization for the maintenance of peace. The principal address was by Professor Edwin D. Dickinson, of the University of Michigan, and the discussion was participated in by Professor Quincy Wright, of the University of Minnesota, Professor A. B. Hart, of Harvard, and others.

At a final joint session with the Economic Association and the Sociological Society, the Political Science Association was represented by Professor Robert E. Cushman of the University of Minnesota, whose paper was entitled "The Social and Economic Interpretation of the Fourteenth Amendment."

At the business session held on the afternoon of December 28, the secretary-treasurer submitted a report on the membership and finances of the association for the fiscal year ending December 15, 1921. In brief summary, this report was as follows:

#### 1. Membership

Members gained during the year.....	173
Resignations and cancellations.....	132
Net gain.....	41
Total members paying annual dues.....	1,304
Life members.....	57
<b>Total membership.....</b>	<b>1,361</b>

#### 2. Finances

##### (a) Receipts:

Balance on hand December 15, 1920.....	\$98.27
Back dues collected.....	446.00
Dues for 1921 collected.....	4,165.94
Dues for 1922 collected.....	577.00
Voluntary contributions by members.....	290.00
Sale of publications.....	179.61
Miscellaneous.....	31.92
<b>Total balance and receipts.....</b>	<b>\$5,788.74</b>

(b) Expenditures:	
Bills paid for 1920.....	\$1,303.35
Williams & Wilkins Company (printing and distributing the <i>Review</i> ).....	3,168.32
Clerical and stenographic assistance in the office of the secretary-treasurer.....	312.60
Clerical and stenographic assistance in the office of the managing editor (including postage)....	642.10
Postage.....	122.00
Stationery and printing.....	153.25
Miscellaneous.....	44.44
Total expenditures.....	<u>\$5,746.06</u>
Balance December 15, 1921.....	\$42.68
(c) Bills remaining unpaid Dec. 15, 1921.....	\$620.83 (estimated)
(d) Trust Fund:	
Balance December 15, 1920 (Certificate of deposit at 4 per cent in First National Bank, Madison, Wisconsin, due February 5, 1922).....	\$979.18
Receipts from life memberships.....	25.00
Total.....	<u>\$1,004.18</u>

The treasurer's books were audited by a committee consisting of Professor R. T. Crane, of the University of Michigan, and Professor C. G. Haines, of the University of Texas. The committee reported the accounts correct.

It was voted that the members of the association should be asked again in 1922, as in 1921, to make a voluntary contribution of one dollar for the support of the *REVIEW*, in addition to the regular annual dues of four dollars.

In view of the improved financial condition of the association and of a recent reduction in the cost of publishing the *REVIEW*, it was voted that the board of editors should, at its discretion, increase the size of each issue to an average of 180 pages.

In pursuance of the report of the committee on instruction, it was voted that the Political Science Association should invite the American Historical Association, the American Economic Association, the American Sociological Society, and the National Educational Association to appoint two representatives each, to confer on the teaching of social studies in high schools, and that representatives of the Political Science Association be instructed to promote coöperation with any other organizations interested in the study of the social sciences in schools, in so far as may be feasible. The committee on instruction,

under the chairmanship of Professor W. B. Munro, was continued; and representatives of the Political Science Association for the purposes just mentioned were appointed as follows: Professor Walter J. Shepard, of Ohio State University, and Professor R. G. Gettell, of Amherst College.

A report of the committee created in 1920 to consider the establishment of a center for research in political science at Washington was presented by two members of the committee, Professor A. N. Holcombe, chairman, and Dr. L. S. Rowe. The report showed that a University Center for Research has been established in Washington, under a board of research advisors, organized in a committee of management and in technical divisions of which the following are now established: Division of History; Division of Political Science; Division of International Law and Diplomacy; Division of Economics; and Division of Statistics. The report in full will be printed in the May issue of the *REVIEW*. It was duly received by the association and the committee was discharged.

A committee on political research was appointed, as follows: C. E. Merriam, chairman, R. T. Crane, John A. Fairlie, and Clyde L. King.

Officers of the association for 1922 were elected as follows: president, William A. Dunning, Columbia University; first vice-president, O. D. Skelton, Queen's University, Ontario; second vice-president, J. S. Reeves, University of Michigan; third vice-president, J. T. Young, University of Pennsylvania; secretary-treasurer, Frederic A. Ogg, University of Wisconsin; member of the executive council for the term ending December, 1923, in succession to Charles McCarthy (deceased), J. M. Mathews, University of Illinois; members of the executive council for the term ending December, 1924, E. C. Branson, University of North Carolina; R. S. Childs, New York City; F. P. Gruenberg, Philadelphia; C. C. Maxey, Western Reserve University; and V. J. West, Leland Stanford University.

Professor John A. Fairlie was reelected managing editor of the *REVIEW*, and on his motion all present members of the board of editors were reelected.

The place of meeting in 1922 was left to decision of the executive council.

## THE STUDY OF CIVICS

The American Political Science Association, at its meeting in December, 1920, authorized the appointment of a committee to define the scope and purposes of a high school course in Civics, and to prepare an outline of topics which might properly be included within such a course. In compliance with this action the Committee submits the following suggestions and outline:

### SUGGESTIONS FOR A COURSE IN CIVICS IN HIGH SCHOOLS<sup>1</sup>

The American Political Science Association believes that there is urgent need for an authoritative definition of the term *Civics*. Originally this term, as applied to high school instruction, was understood to include a study of American government and closely-related matters; but its scope has been so greatly broadened in recent years that it is now regarded in many quarters as including the whole range of the social sciences, economics, sociology, ethics and international relations, with the basic subject of American government thrust far into the background. The result is that high school instruction in the subject, by spreading itself in unguided fashion over so broad an area, has tended to become superficial and ill-organized. Too often it affords the pupil a mere smattering of many things, not articulated to each other or bound together by any central concept, and none of which are presented with sufficient thoroughness to make any lasting impression upon him. It is not the breadth of the range alone but the lack of coördination that impairs the educational value of the subject. The Association believes that this disintegration has been carried too far and that the time has come not only to establish the "outside boundaries" of Civics but to urge a more effective coördination of the topics included within these limits.

At the same time the American Political Science Association expresses its readiness to coöperate cordially with other groups which may be primarily interested in the high-school study of economics, sociology and history, or in the task of providing courses designed to

<sup>1</sup> These suggestions have reference to instruction in the third and fourth year of the regular high school course, and not to such instruction as is often given in earlier years under the name of community civics or elementary civics.

cover in an introductory way the field of the social sciences. We believe, nevertheless, that the outline herewith presented includes the minimum essentials in political science.

This does not mean, however, that the scope of a school course in Civics should be strictly confined to the framework and functions of government. The aim of the course should not be to impart information but rather to give the pupil an intelligent conception of the great society in which he is a member, his relation to it, what it requires of him, how it is organized, and what functions it performs. From his study of Civics the pupil ought, accordingly, to learn something about the chief social and economic organizations and relations. Yet it should not be forgotten that in the field of social studies all roads lead through government. No matter whether the topic under discussion be finance, banking, public health, poor relief, transportation, or labor problems, we must at all times reckon with governmental organization, policy and action as great factors in the situation. The study of governmental organization and the functions of public authority ought therefore to be the center or core of any high school course whose chief aim is to inculcate sound ideals of citizenship, to emphasize the duties of the citizen, and to afford any grasp of public problems.

It is only in this way that a course in Civics can be given the substance and definiteness which it must acquire if it is to hold a secure place among the advanced subjects of the high school curriculum. A single study which merely brings together a mass of loosely-organized topics drawn from the whole domain of government, economics, sociology and ethics can scarcely hope to have any high educational value. The topics, whatever they are, should be related to some central concept. A wisely-planned course in Civics can be made definite, homogeneous and thorough without being narrow or uninteresting.

The immediate problem is to impress upon the pupil the fact that he is a member of the community and ought to be an active, constructive member of it. The teaching of the subject ought to point continually towards civic duty as well as civic rights. Scope and methods should be adjusted to this purpose, which means that social and economic forces which directly affect the activities of citizenship ought to receive adequate emphasis.

It is not the function of a course in Civics to carry on any form of social, economic or political propaganda. Nevertheless the aim should be to develop an intelligent attitude towards questions of the day, hence no well-rounded study of civic activities can wholly avoid some

controverted issues. Intelligent instruction can achieve the main purpose without allowing the study to degenerate into propaganda of any sort.

Three present-day tendencies connected with the teaching of Civics call for a word of comment. The first is a disposition to dispense with the use of a text book, supplanting it by "socialized" recitations, "field work," and "visits to public institutions." However useful these things may be, they do not render a text book superfluous, as has been pointed out by the committee on social studies of the National Education Association (Bureau of Education, Bulletin No. 28, 1916, p. 62). A text book is a positive and practically an indispensable aid to effective teaching no matter from what standpoint the subject of Civics is approached. "There may be exceptionally equipped and talented teachers who can do better without a text book than they would do if they followed explicitly any existing text. Even such teachers will be more successful if their pupils have in their hands a well-planned text; and the great majority of teachers are not prepared to organize courses of their own. The teacher who is not able to use a fairly good text and to adapt it to the needs of his pupils to their great advantage can hardly be expected to be capable of devising a course independently of a text that would in any sense compensate for the loss of the recognized value of the best texts available.

The second tendency is to give preference to text books which have been prepared by a local author and which lay special emphasis upon political, social and economic conditions in the immediate neighborhood. This emphasis is no doubt useful in providing an approach to more remote problems, but there is always a danger that in the zeal of acquainting the pupil with the conditions of his own state or community, the larger life of the nation and the problems of nation-wide scope may receive inadequate attention.

A third feature of high school work in Civics at the present time is the disposition of some school authorities to replace the systematic study of Civics by a course on "Problems of Democracy," or "Social Problems," or something of this kind. This action is based upon the idea that thereby the pupils may be brought directly into touch with the "live problems of the present day" instead of spending time upon the development and organization of political, economic and social institutions. The committee recognizes the value which attaches to the so-termed "problem method" in teaching; but it believes that no effective instruction in the problems of democracy can be imparted

to high school pupils unless they are given an adequate background through the study of governmental organization and functions. To provide this background the course must be comprehensive and systematic, not a study of isolated problems.<sup>2</sup>

The appended outline indicates in a general way the *outside limits* within which, in the committee's judgment, the scope of a high school course in Civics ought to be kept if the instruction is to be made effective. The outline is, if anything, too broad. It is not intended to be a syllabus; it does not include *all the topics*, or *the only topics*, which come within the general field suggested.

The capable teacher can add, substitute, or omit as may be thought desirable. This outline is merely intended to indicate by its inclusions the sort of topics which, on a liberal interpretation of the subject, belong to the study of Civics and by its omissions the kind of material which, in the committee's judgment, does not belong there at all.

These topics are grouped under thirty-three headings. Some of them can be covered quickly; others will require more extended discussion. No attempt is made to apportion the amount of time that should be devoted to each, for this outline is not intended to be a plan of a course but rather a presentation of the topics out of which a course can readily be constructed. The individual teacher can decide, in the light of the time at his disposal, what may best be included and what omitted.

## OUTLINE

### Part 1—The American Environment

#### I. MAN AND SOCIETY

Why men organize. The social instinct. The doctrine of evolution as applied to society. Heredity and environment. Individual and social heredity. The physical and the social environment of man. The chief social groups (family, tribe, community, state, etc). Individual liberty and social control.

#### II. THE UNITED STATES

Geography as a factor in national life and progress. The chief geographical areas of the United States. The soil. Harbors and waterways. The newer territories. Alaska and the insular possessions. Influence of geographic features upon past development. Geography and the future.

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<sup>2</sup> The accompanying outline provides, in effect, a course in the problems of democracy with the essential background included. Where a general and systematic course in Civics is taught in the third year of the high school program it may very appropriately be followed in the fourth year by an intensive study of selected political, economic or social problems; but school programs do not usually permit this arrangement.



### III. THE PEOPLE, RACES AND RACIAL PROBLEMS OF THE UNITED STATES.

The growth of population. How the population is now distributed. The drift to the cities, its causes, extent and results. Principal occupations of the people. Immigration; its history and causes. Nature of the immigration. Present racial distribution. The negro problem. Other racial problems. Assimilation. The effects of immigration, social, economic and political.

### IV. THE AMERICAN HOME AND COMMUNITY

Importance of the family as a unit. Influence of the home in training for citizenship. Marriage as the basis of the family. The divorce problem. The community; what it is. How communities are formed. The needs and functions of the community. The community spirit. The community and the school. How the schools train for citizenship. The relation of good citizenship to community service.

### V. ECONOMIC FACTORS AND ORGANIZATION

The economic needs of man. Economic motives. The subject-matter of economics. The consumption of wealth. Production. The factors in production. Land and natural resources. Rent. Labor. The division of labor. Is labor a commodity? Wages. How rates of wages are determined. Capital and interest on capital. The forms of economic organization. Partnerships and corporations. Profits. Government as a factor in production. The distribution of wealth. Transportation as a factor in distribution. Exchange, value and price. Competition and monopoly. Natural monopolies. Freedom of contract. The institution of private property.

## Part II. American Government

### (a) *The Foundations of Government*

### VI. THE NATURE AND FORMS OF GOVERNMENT

Definition of the state. Definition of government. The purpose of the state. Origin of the state. Various theories as to its origin. The basis of the state's authority. Classification of states. Relation of the state to government. The branches of government. The functions of government. Characteristics of American government. Written constitutions. Separation of powers. Federalism.

### VII. THE CITIZEN; HIS RIGHTS AND DUTIES

Who are citizens? How citizenship is acquired. Naturalization. The rights of the citizen. Are corporations citizens? Civil liberty; what it means and how it grew. Privileges which are not civic rights. The obligations of citizenship. Hindrances to good citizenship.

### VIII. POPULAR CONTROL OF GOVERNMENT

The channels of popular control. Public opinion; its nature and limitations. The election of representatives. The appointment of officials. Election vs. Appointment. Appointments with and without confirmation. Partisan appointments. The spoils system. The rise of civil service. Nature of the civil service system. Its value and limitations.

Popular control through direct legislation and the recall. Origin and spread of the initiative and referendum. Direct legislation in practice. Merits and defects of direct legislation. The recall. The recall of judicial decisions.

*(b) The Electoral Mechanism***IX. SUFFRAGE AND ELECTIONS**

Citizenship and suffrage. Development of the suffrage. Woman suffrage. Present qualifications for voting. Educational tests. Taxpaying requirements. Disqualifications. How voters are registered. Nominations. History of nominating methods. The caucus, convention and primary. Merits and defects of the primary. Election methods. The ballot. The short ballot movement. The preferential ballot. Proportional representation. Corrupt practices at elections. Absent voting. Compulsory voting.

**X. PARTY ORGANIZATION AND MACHINERY**

Why political parties are formed. Nature and functions of political parties. History of American parties. What the leading parties stand for. Party platforms. The minor parties. Economic and social influences on party divisions. Party organization in nation, state and community. The machine. Rings and bosses. Party finance. Practical politics. How parties are financed. The reform of party organization.

*(c) Local and State Government***XI. COUNTIES AND RURAL COMMUNITIES**

Early types of local government. The county; its legal status, organization and officials. Duties of county officers. The reform of county government. City and county consolidation. The county manager plan. The New England town; its organization and the functions of its officials. The township. County districts. Incorporated communities. Problems of local government.

**XII. CITY GOVERNMENT**

Growth of cities. Relation of cities to the state. Municipal home rule. Different types of city charter. The mayor. The heads of city departments. Municipal officials and employees. Civil service in cities. The city council. Boards and commissions in cities. The reconstruction of city government. The commission plan. Its extension, nature, merits and defects. The city manager. Other recent changes in city government.

**XIII. MUNICIPAL PROBLEMS OF TODAY**

City planning. Streets and public works. The protection of life and property. Parks and recreation. The city's share in public health and welfare problems. Congestion of population and its relief. New sources of revenue for cities. Other municipal problems.

**XIV. STATE GOVERNMENT**

The early state constitutions. How state constitutions are made. General powers residing in the states. The governor. Officials of state administration. The state legislature. Legislative procedure. The states as agents of the nation. Relations between the states. Full faith and credit. Extradition. Limitations upon the states. The reconstruction of state government.

*(d) National Government***XV. THE NATIONAL CONSTITUTION**

American government before and during the Revolution. The earlier attempts at union. The Confederation; its weakness. Preliminaries of the Con-

stitution. Personnel of the convention. The convention's work. The compromises. General character of the Constitution. Methods by which it was adopted. Growth of the Constitution by amendment, interpretation and usage.

#### XVI. CONGRESS AT WORK

Organisation of Congress. Merits and defects of the bicameral system. The Senate; its organisation. Its special powers. Confirmation of appointments. Ratification of treaties. Impeachments. Its concurrent powers. Its influence. The House of Representatives. Method of election. Procedure. The Speaker. The committee system. Powers of the House. Relations between the Houses. The general powers of Congress. Congressional finance.

#### XVII. THE PRESIDENT AND HIS CABINET

Nature of the presidential office. Method of nomination. The college of electors. Why great and striking men are not always chosen. The President's powers. Appointments. The veto power. Other prerogatives. Relation of the President to Congress. The President's relation to his party. The Cabinet and the administration.

#### XVIII. THE COURTS AND THE LAW

Judicial organisation in outline. The Supreme Court. The subordinate courts. Jurisdiction of the federal tribunals. State courts. The common law. Statutory law. Equity. The jury system. Constitutional limitations relating to the administration of justice. Due process of law. The unconstitutionality of laws. The law's delays. Reforms in judicial administration.

### Part III. The Civic Activities

#### (a) *Economic*

#### XIX. NATURAL RESOURCES, CONSERVATION, AND THE PUBLIC DOMAIN

The chief natural resources; their value and the danger of exhausting them. Conservation. The forest policy of the United States. National reservations. History of the public lands. Sales of land and the homestead system.

#### XX. THE AGRICULTURAL INTERESTS

Importance of agriculture. Chief types of agriculture in the United States. Agriculture and the law of diminishing returns. Exhaustion of the soil and its prevention. Relation of agriculture to transportation. The problem of agricultural credit. The federal farm loan banking system. Agriculture and the labor problem. The work of the department of agriculture. The state agricultural authorities. Experimental farms. The county life commission.

#### XXI. THE ENCOURAGEMENT AND REGULATION OF COMMERCE

Purposes of commerce. Local, interstate and foreign commerce. How commerce is regulated. The interstate commerce commission and its work. Railroads and the Sherman Act. The railroads in war time. The Transportation Act of 1920. The future of the railroads. Foreign commerce; its scope and value. Government aid to shipping. The shipping laws. The merchant marine; its history. The consular service. International commerce and international exchange. Foreign commerce and the tariff. The tariff policy of the United States.

**XXII. INDUSTRY AND LABOR**

Modern industrial organization. Corporations. Combinations in industry. The control of industrial combinations. The federal trade commission. The general relations of government to industry. Labor's part in the industrial order. History of labor organizations. The American Federation of Labor; its organization and program. Methods and policies of labor. Collective bargaining. The right to strike. The closed shop and the open shop. Conciliation and arbitration. Compulsory arbitration. Industrial accidents and employers' liability. Child labor laws. Minimum wage laws. The problem of unemployment.

**XXIII. CURRENCY, BANKING AND CREDIT**

Money and its origin. The functions of money. The coinage of the United States. The double and single standard. Paper money. Legal tender. The functions of banks. National banking system. Federal reserve banks. Some practical operations of banking. The relation of credit to money. Credit and prices. Workings of the credit system.

**XXIV. PUBLIC UTILITIES**

Nature of public utilities. The need of public control. Franchises. Methods of public utility regulation. Public service commissions; their organization and powers. Public ownership; its merits and defects. American and foreign experience in public ownership. Public utility problems at the present day.

**XXV. PUBLIC FINANCE**

The cost of government. Taxation, its forms and incidence. Leading principles of taxation. Local taxes. State taxes. National taxes. Economic and social purposes of taxation. The division of the taxing power between national and state governments. Suggested reforms in taxation. Government expenditures. How appropriations are made. The new national budget system. Public debts. Methods of public borrowing. Debt limits. How public debts are repaid.

*(b) Social***XXVI. PUBLIC HEALTH**

The chief problems of health protection. Quarantine. The prevention of epidemics. Vital statistics, their nature and use. Some instances of progress in preventive medicine. Public sanitation. Public water supplies. Milk inspection. The inspection of food and drugs. Housing regulations. The work of local health boards. State health organization. The U. S. Public Health Service.

**XXVII. POOR RELIEF, CORRECTION AND OTHER WELFARE PROBLEMS**

The problem of poverty. Old and new methods of dealing with it. The causes of poverty. Its prevention. Social insurance. Crime and its causes. Crime prevention. Prisons and prison reform. The care of mental defectives. Social amelioration and reform.

**XXVIII. EDUCATION**

The public school system. State and local school authorities. State control of education. Educational work of the national government. School finance. The newer demands in education. Vocational education and vocational guidance. The Gary system. Wider use of the school plant. Americanization.

*(c) International***XXIX. NATIONAL DEFENSE**

Defense as a function of government. Militarism. The causes of war. The prevention of war. Preparedness. The regular army. The national guard. The national army during the World War. America's part in the war. Universal military service. The navy. The problem of disarmament.

**XXX. FOREIGN RELATIONS**

The nature of international law. The control of foreign relations. The diplomatic service. Secret and open diplomacy. Treaties. Extradition. Outstanding features of American foreign policy. The Monroe Doctrine. American contributions to international law. The war and international relations.

**XXXI. THE UNITED STATES AS A WORLD POWER**

Traditional foreign policy. Why isolation is no longer possible. Relations with other American states. Relations with Europe. American interests in the Far East. Interests acquired during the war. Pending questions of foreign policy. The loans to European powers. Mandates and special privileges. Other diplomatic problems.

**XXXII. THE LEAGUE OF NATIONS**

The idea of a league of nations in history. Purposes of the Versailles covenant. Its chief provisions. America's objections to the League. The League as a scheme of government. The League at work. What it has accomplished. The position of the United States in the new world order.

**XXXIII. WORLD PROBLEMS AND DEMOCRACY**

Results of the war on political, social and economic organization. The growth of radicalism. The soviet system. Plans for socialist commonwealths. Direct action. The reconstruction of government by constitutional means. Can democracy solve the problems of today? American contributions to democracy in the past. The ideals of democracy. What America can contribute in the future.

The undersigned have given their general approval to the foregoing suggestions and outline in order that a tangible basis for further discussion and for improvements may be afforded. This general approval is not to be construed, however, as an unreserved endorsement, by any of the undersigned, of every item in either the suggestions or the outline.

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## BOOK REVIEWS

EDITED BY W. B. MUNRO

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*Le Droit International Public Positif.* By J. DE LOUTER.  
(London: Oxford University Press. 1920. 2 vols. Pp. 576  
and 509. Published by the Carnegie Endowment for Inter-  
national Peace, Washington, D. C.)

In nearly half a million of words, Professor de Louter gives us a comprehensive treatise of the whole field of public international law. The further qualification of his subject by the addition of *positif* (positive) indicates the purpose of discarding all abstract theorizing to base his system of the law of nations upon the modern practice of independent states (I, p. 48). The plan is well conceived and admirably executed. The author shows that he has thought out each section, and although his regard for the authorities who have preceded him is always respectful, it is never slavish. The French in which this scholarly Dutchman has recast his treatise preserves a personal and piquant flavor which sustains the interest through every page.

Among so many qualities of perfection the most serious defect is Professor de Louter's failure consistently to adhere to the positive system which he has proclaimed, when he reaches the discussion of such questions as intervention, equality of states, and reprisals. In these matters state practice is conspicuously at variance with what many of the champions of the alleged rights of weaker states would like to think to be the law, but Professor de Louter elects to support the rights of small states *nonobstant* the hard facts of international practice. For instance the existence of a right of angary is controverted, although, as the author frankly admits, it is "recognized by Germany, France, Italy, and the United States" (II, p. 431).

Professor de Louter concludes his treatment of intervention by declaring: "The preceding discussion makes it clear that except in rare instances there does not exist a right of intervention and that it ought rather to be stigmatized as a brutal assault against the basic

principles of law. Only those who deny or reject those principles can defend the right of intervention" (I, p. 251).

This would be all very well if Professor de Louter had based his principles of international law upon his own abstract ideas of what the law should be, but he claims to construct his system upon the practice of states, and an examination of the incidents which have occurred will show beyond dispute that states as a matter of practice do intervene frequently and upon grounds clearly stated and consistently sustained—in other words these precedents constitute a basis for the law of intervention. It is in regard to this very law of intervention that the positive system of international law most clearly justifies itself.

Perhaps a certain Anglophobia of which we repeatedly find evidence in the chronicling and interpreting of events is to be explained by the same desire to attribute to the smaller states more extensive rights than they will be found in actual practice to enjoy.

Particularly to be regretted is the lack of an index such as would enhance the value of these two volumes as a work of reference and facilitate the collation of the many valuable comments and bibliographical notes with the opinions of other authorities.

Within the compass of a review necessarily so brief we can perhaps best illustrate the quality and scope of this extensive treatise by concluding with an excerpt somewhat freely translated from one of the introductory pages:

"From what we have said above it follows logically and necessarily that international law although it is engendered by the free will of the states, from its birth put a check upon them. Even though the greatest caution is required when we attempt to draw a comparison between the law governing private relations and that of public affairs, we are justified in saying that the integrity and juridical capacity of sovereign states does not exclude limitation upon their liberty of action, provided that these limitations result from their own free will. Thus for example the capacity to bind himself by contract which an individual possesses permits a considerable restriction of his liberty of action. It is to be remembered that the guiding principles of international law, whatsoever be their origin, bind the states which have once acknowledged their empire, and that they limit the action of such states in internal and external affairs. Whoever loses sight of this fundamental truth denies the juridical character—that is to say, the existence and possibility of international law. It is impossible to accept the doctrine that a sovereign state is restricted in its freedom of action only so long



as it desires so to continue, because this doctrine undermines the very foundation of international law. The only difference between international law and national law is in their origin; the obligatory character of the two is completely identical. The restriction upon the freedom of action of an individual state finds ample compensation in the expansion of the common activity, thanks to mutual aid and reciprocal assistance. That which a single state cannot achieve is made possible by the coöperation of several. In this manner they become the organs by which law transcends national boundaries and effects a universal jural order. In fact, it takes on more and more the aspect of a law which governs not merely the relations of peace, but which preserves and guarantees peace. This is the road which leads to universal peace and it is far more sure than the most seductive Utopias. The gradual development of a universal community of law makes every disturbance a common calamity which ought to be anticipated and arrested by the combined might of all." (I, p. 17).

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*The Secret Treaties of Austria-Hungary, 1879-1914. Vol. II: Negotiations leading to the Treaties of the Triple Alliance; with documentary appendices. By ALFRED FRANCIS PRIBRAM and ARCHIBALD CARY COOLIDGE. (Cambridge: Harvard University Press. 1921. Pp. ix, 271.)*

Time alone will tell whether the doctrine of the Balance of Power is really "forever discredited." In its more general sense of the desirability of coalitions to restrict and repress a state which threatens to become too great, it may reappear upon occasion. In the narrower sense of an equilibrium between two rival groups of states, the story of the Triple Alliance and the Triple Entente warns the world against it. Such a balance of power did not exist between 1871 and 1891, during which time Bismarck spun a web which, while he remained Chancellor, connected in closer or remoter relationships most of the governments of Europe except the defeated and isolated France. After his fall Germany let go the slender tie with Russia, and France, joining with the Czar's government, began the formation of the rival league. Thus came into being an equilibrium of forces which for nearly a quarter of a century was widely praised and acclaimed as a device securing prolonged and perhaps permanent peace. Actually the situation was never stable.

In harmony with the older idea of balance, support was gradually transferred from Germany, which was steadily growing in population, wealth, energy and ambition, until in the trial by battle the structure reared by Bismarck could be utterly destroyed. It may be that the Triple Alliance, originally purely defensive and designed to maintain peace, only deferred war, rendered it inevitable, and prepared conditions which made it far greater and more terrible. This is a reflection to be taken into account when any treaty of alliance is proposed, in appearance however salutary.

The present volume increases the mass of material in English which may one day make possible a final judgment on the whole process. It should be read with its predecessor (reviewed in this journal), which contained the texts of the treaties of the Triple Alliance and other important secret agreements of Austria-Hungary, together with a chapter introductory to the material in this volume. Now appears Professor Pribram's summary and discussion of the diplomatic negotiations which led up to the five treaties of the Triple Alliance (in 1882, 1887, 1891, 1902, and 1912). He has promised similar treatment of the remaining 23 groups of instruments presented, and later a more general work on the foreign policy of Austria-Hungary from 1879-1914. The American editor (whose part has been as excellently done as in Volume I) has appended some of the chief documents of the Dual Alliance of France and Russia, and the exchanges of notes between the French and Italian governments in 1900, 1902, and 1912.

Professor Pribram's discussions are based on diplomatic correspondence and conference notes found in the archives of Austria-Hungary and such appropriate memoirs and comments as have been published. He could not see the correspondence between the German and Italian governments. The materials are put together in a clear and direct narrative, with numerous careful notes and references. His attitude is detached and dispassionate, unless the question be raised whether his feeling against Italy is stronger than that country's statesmen earned by their somewhat tortuous course.

The successful diplomat must be a prophet and more. He must in some measure not only foresee the future, but also control it. In a static world his task would be easy, perhaps indeed unnecessary. Given the actual world, with governments independent, proud, inclined to make virtues out of selfishness and touchiness, and furthermore subject to many alterations of internal and external conditions, his life is anxious and uneasy, demanding forbearance, patience, shrewd-

ness, and accommodation. All this is amply illustrated in the negotiations of the Triple Alliance.

At the beginning Germany, confronting the enduring hostility of defeated France, and Austria, at odds with Russia after the Berlin settlement, had already come together in an alliance which neither was seriously to question in forty years. Italy, troubled within and without, joined them, always inclined to be friendly with Germany, but never fully loyal to Austria. This relationship was maintained by formal treaty for thirty-two years, but only by means of several periods of negotiation, involving usually some concessions made by the two empires to Italy. First in a protocol with Germany (1887) and later in the treaty itself (1891) Italy displayed aggressive thoughts toward France. But her interests and ambitions alike demanded good terms with England and at least a *modus vivendi* with France. In commercial and diplomatic negotiations between 1898 and 1902 Italy, without ceasing to be the ally of the Central Powers, became so far the friend of France as to promise neutrality not only in case France were attacked, but even under certain conditions in case France should be the aggressor. It was not positively known, but was strongly suspected by each side, that the written promises of Italy were in contradiction. No one was therefore much surprised when by remaining neutral in 1914 and joining in the war against her former allies in 1915, Italy brought the Triple Alliance to an end.

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*The Foundations of Sovereignty.* By HAROLD J. LASKI. (New York: Harcourt, Brace and Company. 1921. Pp. 317.)

This volume contains nine independent essays, all save the first reprinted from various reviews or, in the case of the second, from the *Smith College Studies*. Their titles are: *The Foundations of Sovereignty*; *The Problem of Administrative Areas*; *The Responsibility of the State in England*; *The Personality of Associations*; *The Early History of the Corporation in England*; *The Theory of Popular Sovereignty*; *The Pluralistic State*; *The Basis of Vicarious Liability*; *The Political Ideas of James I.* While distinct studies, they constitute a unity through the underlying point of view, the idea of a pluralistic state, with which Mr. Laski's name is so closely identified. Their collection in one volume is thoroughly justified.

Mr. Laski's two previous volumes on the *Problem of Sovereignty* and *Authority in the Modern State* were chiefly concerned with a criticism of

the doctrine of sovereignty which is the corner-stone of the accepted theory of the state. They were cogent and convincing demonstrations of the inadequacy of the current political philosophy. But they left the reader with the feeling that, while Mr. Laski had rather successfully demolished the theoretical foundations of the existing state-structure, he had not offered any very tangible or definite substitute. The present work also contains much of destructive criticism, but it is far more constructive than its predecessors. "These essays," the author says, "are part of a scaffolding from which there is, I hope, eventually to emerge a general reconstruction of the state." The detailed outlines of the new edifice are, to be sure, not even yet clearly envisaged, but the ground plan is at least fairly well determined. Instead of an all-absorptive sovereign state, the fictitious character of which is daily becoming more evident, and which of necessity employs other innumerable fictions to explain and justify the exercise of its alleged omnipotence, we can see emerging a social order based upon the reality of a diversified group life. Instead of the *sic volo! sic jubeo!* of an antiquated absolutism, we see law and government becoming the expression and harmonization of the complexity of actual social interests. Instead of the power of government being in fact vested, in travesty of our vaunted theory of popular sovereignty, in the hands of a small governing class and exercised in the interest of certain other controlling economic classes, we can perceive a new order taking shape in which functional organization will give truthful expression to the principles of democracy.

The consummate importance of the thesis which Mr. Laski maintains is beyond question. Its implications involve every phase of jurisprudence, administration, and politics. It offers a veritably new *Weltanschauung*. It proposes as radically different an interpretation of the state and all its penumbra as did Darwin's doctrine of natural selection for the facts of biological science, and its general acceptance is certain to have as far-reaching and important an influence. Whatever his prepossessions may be, the student of political science cannot ignore Mr. Laski. Buttressed and fortified at every point by a wealth of historical and legal knowledge that attests a scholarship both profound and critical, and illumined by a clarity of vision of the trend of social and economic forces that is almost prophetic, the argument demands either acceptance or refutation. The challenge cannot be avoided.

WALTER JAMES SHEPARD.

*Ohio State University.*

*Principles and Problems of Government.* By CHARLES GROVE HAINES and BERTHA MOSER HAINES. (New York: Harper and Brothers. Pp. xvi, 597.)

The authors of this volume have approached the study of government through a consideration of the important forces, principles and problems relating to the operation of government, rather than by a detailed description and analysis of the organization and machinery by which public affairs are conducted. Consequently there has been no attempt to give many facts about governmental structure or procedure except as to a few topics which are of recent origin or on which information is not readily available, such as budget systems in the American states, the reorganization of state administration, the initiative and referendum, and the League of Nations. As stated in the preface, the book is intended "to supplement the works now available on the description and analysis of governments," and not "to train the memory by a repetition of facts." It has been prepared primarily for use in elementary college courses but also contains much information which should prove of interest to the general reader who is looking for a statement of the more important current issues in governmental organization and control.

In order to furnish the proper background for the study of modern political problems, the first three chapters, constituting Part I, take up briefly the evolution of political institutions, theories as to the origin and development of government, the newer ideas as to sovereignty and the relation of political science to other subjects such as history, economics, sociology, law and psychology. Part II, entitled "Problems of Public Control of Government," is devoted to a discussion in a lucid and interesting manner of the problems connected with public opinion in relation to popular control, political parties, the direct primary, the short ballot and the merit system. Part III, on "Principles and Problems of Government Organization and Administration," considers such matters as constitutions and constitution-making, federalism, parliamentary versus presidential systems, questions arising out of legislative organization and methods, the need for administrative consolidation and recent tendencies in the administration of justice. Among the most interesting and valuable features of this portion of the book are the discussion of uniform legislation, small claims courts, actual plans of state administrative reorganization, and the plans proposed or adopted for improving the work of legislative bodies, the

decline of which has been mentioned by Lord Bryce as one of the most striking defects of modern democracies.

In the final part of the volume attention is directed to a few of the more specialized problems in the operation of government, including an analysis of public expenditures and causes of their increase, budget systems, regulation and control of public utilities, world politics and the various views as to the proper extent of governmental functions. Throughout the work the authors have given chief consideration to the issues relating to American government, but certain features of foreign countries are discussed by way of comparison and contrast. Each topic is so treated as to set forth one or more problems for further enquiry and discussion and additional references are suggested for this purpose.

The volume has very few errors or apparent faults. One or two minor matters, however, might be criticized. The author of "Principles Governing the Retirement of Public Employees" is Lewis Meriam, not Merriam (pp. 188, 196). The local government board in England has been absorbed by the new ministry of health (pp. 354-355). The opening chapter on the origin and development of government, which attempts to trace the history of political institutions in the brief space of thirty-five pages, is too sketchy to be of much value except as an outline. But these matters are of minor importance, and the book as a whole is a most useful and opportune one. The style of the authors is simple, clear and readable, each chapter is followed by a selected list of supplementary readings and there is a fairly complete index.

A. C. HANFORD.

*Harvard University.*

*An Introduction to the Problem of Government.* By W. W. WILLOUGHBY and LINDSAY ROGERS. (New York: Doubleday, Page and Company. 1921. Pp. 545.)

This is one of the most notable among recent books on the general problems of political science and government. It deals with political theory and practice in the light of the world's experience. The book is not a systematic treatise in the ordinary sense; it does not purport to include the whole range of governmental activity. As its title implies, it is an "introduction" to the general problem of governing a free people. A glance at the table of contents will show that the authors have singled out practically all the great questions of government which are engaging the public interest today. It is a book for the live teacher

and student of contemporary affairs—not for the antiquarian or the delver into origins.

The twenty-four chapters are devoted to the most essential features of political life and governmental methods. Little unnecessary detail finds its way into the text, but the great principles of government are given adequate treatment. There is, however, at the present time, some reason to believe that more attention might be given to the problems of foreign policy, or foreign relations. Since the overthrow of Orlando, Clémenceau and Wilson, and the rise of questions relating to the treaty-power, it would seem fitting, even though it is not customary, to lay particular stress upon this topic in a work on problems of government.

One of the noteworthy features of this work is the vigor with which it eulogizes democratic government and points out the defects of monarchical rule. The authors point out that republics rest on "the principle that all powers of the government are derived by grant from the people." They admit that it is possible to have a king rule by virtue of delegated powers based on a grant from the people. This, they maintain, would not violate the principle of the republic. It would be violated, however, if the king claimed to rule by "an original personal right."

The constitution of Japan is discussed as having a great deal yet to attain on the road to a democratic government. This discussion follows one in which the development of the democratic German commonwealth from the monarchical empire is traced. The survey of Japanese government ends with the expression (quoted from Professor McLaren) of a hope for a further democratization of her government. The Japanese constitution is given in an appendix.

In view of the tremendous extra-constitutional power wielded by the major political parties, the authors have stressed the significance of this feature. Their power in Congress is particularly well portrayed.

On page 263 the following statement appears: "It is a striking fact that two long-fought political causes—Woman Suffrage and Proportional Representation—were greatly aided by the War." This is undoubtedly true, but the same thing might be said of prohibition, budget reform, and economic reconstruction. The authors devote a whole chapter to budgetary procedure, and it is well that they do so; the time has come when this topic should be handled not as reform propaganda but as an integral feature of our governmental practice. The text of the budget and accounting act of 1921 is given in an appendix.

An enlightening chapter is devoted to proportional representation. New and highly significant figures are tabulated and they throw into strong relief some of the glaring inequities of the district plan of representation. An appendix carries the text of the British proportional representation scheme of 1918.

The book is a conspicuous contribution to the post-war literature on governmental problems. The numerous illustrations from American experience make the work acceptable to the American student, but the text is also fortified at every point by illustrations from British governmental experience as well.

J. EUGENE HARLEY.

*University of Southern California.*

*Popular Government.* By ARNOLD BENNETT HALL. (N. Y.: Macmillan Company. 1921. Pp. 296.)

Popular government, according to Professor Hall, rests upon public opinion. He therefore analyzes popular opinion, its formation, value and limitations, and finds, as President Lowell before him found, in *Public Opinion and Popular Government*, that public opinion is not necessarily based on facts or knowledge, but on inherited traditions, or even mere prejudice. On whatever based, real public opinion is conclusive in popular government. But public opinion is not merely the opinion of the majority; it "must be such that while the minority may not share it, they feel bound, by conviction not by force, to accept it." In his discussion of the possible improvement of public opinion, Professor Hall stresses education, the press, citizenship, and especially party leadership, showing in the case of party leadership how conclusive it is on matters outside the domain of common knowledge, for example foreign affairs.

Professor Hall is a firm believer in representative government as opposed to direct democracy, and the greater part of the book is taken up with a critical analysis of the instruments which have been tried to insure the rule of the people. The direct primary, presidential primary, the initiative and referendum, the recall of judicial decisions, and the recall of officers are subjected in turn to searching but by no means unsympathetic criticism. In each case their limitations are shown to be the impossibility of obtaining either an accurate expression of public opinion, or the fact that any direct expression of public opinion would be of less value than that given by representatives. True to his thesis,



that representative government rather than direct democracy is desirable, Professor Hall firmly believes in constitutional restraints, which, interpreted by the judiciary, are binding upon officials and legislatures alike. He favors the short ballot movement as the best means by which representatives and officials may be chosen who shall adequately express public opinion.

Although Professor Hall modestly asserts that he has no contribution to offer, his analysis of the institutions he studies and the development of his thesis is sympathetic, and his presentation novel and convincing. The conservatives and those attached to representative government will find their convictions strengthened, while the proponents of direct government will be compelled to reexamine the foundations of their faith.

EVERETT KIMBALL.

*Smith College.*

*A New Constitution for a New America.* By WILLIAM MACDONALD. New York: B. W. Huebsch, 1921. Pp. 260.)

This is not a radical book. Dr. MacDonald is opposed to the initiative and referendum in federal affairs. He does not advocate proportional representation. Though proposing the direct popular recall for congressmen and senators, he would extend the terms of the former to four years. Though he would reduce the terms of the latter also to four years, he would not alter the equal representation of the states in the Senate, despite their great and growing inequalities in population, wealth, and political importance. He is opposed to all primary legislation and other laws for the regulation of the affairs of political parties. Nor is anything said about the further development of the federal corrupt practices acts in order to diminish the power of wealth in politics and to foster the supremacy of an enlightened public opinion. In short, the progressive movements of the decade before the war in the field of state government have left him cold and indifferent.

The author approves certain increases in the powers of the Congress. He would give it jurisdiction over divorce, the creation and regulation of business corporations, and any occupation or industry which is in fact national or interstate in scope. But he is vehemently opposed to national prohibition. The states, he thinks, should be prohibited from making any law respecting the establishment of religion, or abridging the freedom of speech and of the press. The state militia

should be abolished. Universal suffrage should be established throughout the Union for federal elections, and the Congress should have exclusive control thereof. Congressmen should be elected in each state at large on a general ticket, half of them in such a manner as to represent the dominant economic group within the state. He approves an executive budget system, but his panacea is responsible cabinet government upon the model of the British parliamentary system.

Dr. MacDonald gives little consideration to the probable operation of the constitutional changes which he proposes. His plan for occupational representation would mainly tend to increase the representation of the farmers in the Congress of the United States. As this is already the most influential class in national politics, it is difficult to guess what he expects to gain by such a measure. His plan for the liberation of parties from legal control would mainly tend to restore the conditions that prevailed before the introduction of the direct primary. The introduction of cabinet government in the traditional British form would tend to bring about in this country the very conditions from which radical political reformers abroad are trying to escape. In short, if Dr. MacDonald did not enjoy a hard-won reputation as a forward-looking publicist, and could be judged only by this volume, it would be necessary to put him down as an apostle of reaction.

A. N. HOLCOMBE.

*Harvard University.*

*Le Gouvernement par les Juges et la Lutte contre la Législation Sociale aux Etats-Unis.* By EDOUARD LAMBERT. (Paris: Marcel Giard & Cie. 1921. Pp. 276.)

Few, if any, Americans have analyzed their judiciary from the standpoint of its control over legislation so thoroughly as Professor Lambert of the University of Lyons has done. His analysis is supported by references to and quotations from opinions of the Supreme Court and of some state courts, the *Congressional Record*, bulletins of the bureau of labor statistics, technical legal works such as Wigmore's *Evidence*, almost all monographs and other books dealing with any of the phases of judicial supremacy, reports of bar associations, numerous articles in all the leading American law journals, in the political science and economic reviews, and in some more popular American magazines. *Le Gouvernement par les Juges* is, however, much more than a digest of this mass of material. As an impartial observer, trained by the study

of comparative law, Professor Lambert is struck by the peculiarities of the legal system to which Americans have become accustomed. His conclusions are therefore worth noting even though he seems chiefly intent on pointing out to his own countrymen what may be expected if their courts, at the behest of Charles Benoist, Jules Roche and others, follow the American example. Some recent decisions of French courts are indeed approaching American practice by interpreting legislation to conform with the individualistic principles of the *Code civil*. A second purpose is to point out to French students of comparative legislation that "the American statute is always an incomplete and sometimes a false expression of juridical reality," a fact that some seem to have overlooked.

The inferior position of the American statute is due, primarily, to the extension during the last twenty-five or thirty years of judicial control over the constitutionality of laws. Prior to 1883, approximately, judicial control extended only to legislative competence over certain subjects and not at all to the manner in which the legislature exercised its right. Willoughby's *Constitutional Law* and Bryce's *American Commonwealth* describe the judiciary as it functioned in this early period. Since 1883, judicial control has been extended under cover of the bill of rights and the Fourteenth Amendment. By the opening of the twentieth century the American judiciary has been able to exercise constant supervision over legislation. This supervision has been aided by the development of two criteria, "reasonableness" and "expediency," representing opposing tendencies. The one is used to keep statute law within the bounds of common law, the natural, hence reasonable law. The other is used when the court is willing to permit a modification of the common law.

Social legislation furnishes the best field for studying judicial supremacy. Acts forbidding wage payments in store orders and workmen's compensation acts were among the laws declared beyond the power of legislatures to enact until long after European governments had adopted similar measures. The supposedly more progressive attitude of the United States Supreme Court is largely delusive. In general the decisions of the judges as to the constitutionality of social legislation are "dominated by their mental attitudes or by their predilections based on heredity, environment and education, as are the verdicts of all other juries." Realization of this power possessed by the courts is held largely responsible for the persistence of the popular election of judges in the states. The recall of judges and of decisions will afford little or no relief from judicial supremacy.

Recent discussions lead Professor Lambert to consider the view, at first incomprehensible to one accustomed to parliamentary government, that there are limitations on the amending power which the courts can enforce. If, for instance, an amendment took from the courts the determination of what constitutes "due process" or subordinated the judiciary to the legislature, Professor Lambert predicts it would be declared invalid by the courts. The court's opinion in *Rhode Island v. Palmer* asserts "a right as much of construction as of constitutional control over amendments" and demonstrates that, "if thus far the court has exercised its control only as to the regularity of the amending process, it has never renounced the extension, the case arising, to the verification of the legality of their contents." The recent decisions of the supreme court of Colorado (*People v. Max*, 198 Pac. 150. Also, *People v. Western Union*, 198 Pac. 146) invalidating the recall of judicial decisions amendment were probably rendered too late to furnish additional support for Lambert's conclusion. Another possible extension of judicial authority which is taken up is the control over treaty-making.

The second reason for the inferior position of the American statute is that American courts have broader powers of construction than French or even English courts have, because this power is associated with that of declaring acts invalid. The power of construction is aptly illustrated by a detailed review of the Supreme Court's treatment of the Sherman and Clayton Acts. A third reason for the American statute's inferiority is attributed to the influence of legal education, particularly the case-method of teaching law.

Finally, three palliatives for judicial review are considered: advisory opinions, declaratory judgments and administrative application of statutes. The first would be an improvement, but is rendered practically impossible by strongly established traditions. The doubtful success of the second would decrease neither the lack of coördination nor the instability of judge-made law. It would only increase the undesirable element of subjectivism. Little can be hoped for from the third, as long as administrative tribunals have to work under the supervision of the courts. Before administrative justice can aspire to supplant the justice of the courts it must become its equal. There is a long road to travel before this will be attained. The examination of the three palliatives is concluded with this remark: "After having encircled the judicial stronghold looking for fissures, I ask myself how the adversaries of this system of government can, without departing from

constitutional methods, secure its overthrow except by slipping in as defenders of the stronghold in order to open to their companions in arms the only practicable entrance—that which is barred by control over the constitutionality of the laws.”

Dealing with such a mass of material in a foreign language, minor errors in citations, in names of writers and titles of their works are to be expected. Perhaps the most serious error appears on the first page where the Godcharles case is referred to as having been decided in the supreme court of Massachusetts, though the footnote correctly cites the Pennsylvania state reports. Barnard's monograph, there incorrectly referred to as in the Johns Hopkins *Studies*, is correctly cited on page 69. There is no index. The book is admirably written in the inimitable style which is so characteristically French.

HOWARD WHITE.

*University of Illinois.*

*Le Vote des Femmes.* By JOSEPH-BARTHÉLEMY. (Paris, F. Alcan, 1920. Pp. xi, 618.)

This brilliantly argued case for the enfranchisement of French women, presented in a book which has been crowned by l'Académie des Sciences Morales et Politiques, is the outcome of the author's lectures at the École des Sciences Politiques.

He surveys with clearness and enthusiasm considerations that have long been familiar ground in the literature of equal suffrage. All the theoretical pros and cons, which have already come to have a merely academic interest in this country, are reviewed. The right to vote is found to be derived from the principles of democratic representation, upon which modern public law is founded. The suffrage is further declared to be an instrument for defending interests. Women have interests to defend, for, in spite of the modifications which have been made in the Napoleonic Code, the French law leaves women in a position of marked inferiority. Less is spent on their education; they may not serve on a jury or witness a birth certificate; in marriage, domicile and nationality are determined by the husband; the mother has nothing to say legally as to the education or religion of her children. Moreover, the seven and one-half million wage-earning women in France need the vote to repeal the masculine laws prohibiting them from entering public work and the professions. They need the vote to secure a living wage.

In May, 1919, the French Chamber of Deputies voted full equality of political rights to women, but the Senate has not approved the action. The practical effects of woman suffrage in the countries where it does function are made the prime object of the study in order that the experience may be utilized for France. This experience is set forth in great detail and with a really amazing familiarity with a wide range of literature. Especial attention is given to England as the first great sovereign state to realize political equality of the sexes. The interesting account of the history in the United States is not carried to the point of the adoption of the Nineteenth Amendment.

It is noted that no Latin or Catholic countries have joined the equal suffrage ranks, that the first experiments were all in weak countries and later in great states, and that they have everywhere been made as the result of long-continued efforts of the women themselves. In the actual exercise of the franchise, women are found to use the right to vote, but to remain relatively inactive in the preliminaries; they have not tended to form separate party organizations. The experience of the American states is cited to show improvement in women's economic status with the vote, in the opening of new and better employments. With woman suffrage has come a mass of needed social legislation: the protection of mothers, children, and women workers, and laws for the control of prostitution, drugs and drink. Concluding, the author declares unconditionally for parliamentary eligibility of women and for equal suffrage.

AMY HEWES.

*Mount Holyoke College.*

*The Pageant of Parliament.* By MICHAEL MACDONAGH. (N. Y.: E. P. Dutton and Company. 1921, 2 vols. Pp. 252, 241.)

Many books have been written about the organization and powers of Parliament, but we have had very few portrayals of the "Grand Inquest" at work. Mr. MacDonagh's volumes are well-named, for they present a lively and comprehensive picture of Parliament as a going concern, in all its moods and actions, and with all its striking pageantry. They deal with many topics which never find place in the standard treatises on English government—with the humors and tragedies of debate, the oddities of procedure, and with the tribulations of the average M. P. The pages are well-stocked with anecdotes; the great parliamentary figures of the past generation flit in and out before

the reader's eyes. It is all very interesting and makes a strong appeal to anyone with a liking for the picturesque. No writer has ever more vividly shown us what a remarkable body this Mother of Parliaments is—its combination of quaint mediaevalism with aggressive modernity.

For thirty-five years the author has sat in the press gallery at Westminster and not much has been allowed to escape his eye. But his volumes contain a good deal more than the fruits of casual observation. Mr. MacDonagh has been a careful student of parliamentary history and traditions, of constitutional usages and legislative practice. He has mastered all that one finds in the treatises, and more. This has enabled him to measure the significance of the things that he now writes about. Those whose reading has brought them into contact with the author's earlier books need only be assured that the style of these later volumes is equally interesting and the contents even more so. Here is a spirited chronicle of Parliament, in its contrasts of solemnity and gaiety, its ceremonies and customs, its achievements of oratory and statesmanship, and all the rest. Avoiding the usual paths, Mr. MacDonagh has betaken himself to the byways in search of fresh and apt anecdotes to brighten up his descriptions, and his quest has been notably successful. The American teacher who desires to liven his lectures on English government with sprinkling of human touches will find *The Pageant of Parliament* a godsend.

W. B. M.

*Geschichte des Neueren Schweizerischen Staatsrechts.* Bd. I, *Die Zeit der Helvetik und der Vermittlungsakte, 1798–1813.* Von DR. EDUARD HIS. (Basel. Helbing & Lichtenhahn. Pp. xix, 691.)

The interesting and formative period in Swiss history from 1798 to 1813 has been covered already by many writers who have dealt with the subject from the various viewpoints of the political, military, and general historian. Until the appearance of the present volume, however, no one has attempted to give a systematic and connected account of the history of Swiss public law as a whole during the period of the Helvetic and Mediation Acts. There can be no doubt that this careful and exhaustive work by Dr. Eduard His will at once take rank as of the highest authority. Following a general survey of the constitutional development of the period, he analyzes in the most admirable

manner the various constitutional provisions dealing with the rights of men, the form of the state, citizenship, territories and territorial divisions, popular sovereignty, the constituent power, separation of powers, representative principle, organization of separate powers, equality before the law, freedom of religion, of the press, right of public assembly, of petition, of settlement, freedom of industry and commerce, private property, taxation, military duty and organization, the schools, etc. American readers of this monumental work will be interested particularly in the various references to the influence of our own Constitution upon the mind of Napoleon when he was drawing up the Act of Mediation.

ROBERT C. BROOKS.

*Swarthmore College.*

*Occasional Papers and Addresses of an American Lawyer.* By HENRY W. TAFT. (New York: The Macmillan Company. Pp. xxiii, 321.)

The seventeen papers and addresses collected in this volume are in Mr. Taft's own introductory words "the by-product of a busy professional life."

They cover a wide range of topics, ranging from after-dinner remarks to learned dissertations on subjects of constitutional law. Some of them are trivial; some are ephemeral; none show any marked brilliancy of style or originality of thought; and yet the general impression gained from reading them is that the author feels far more keenly than most of his colleagues the sense of social responsibility and political obligation which rests upon the American bar and bench; and that "stimulation to greater effort in promoting the effective administration of justice and a more active performance of the duties of citizenship" is needed.

The most valuable paper in the book is called "Some Responsibilities of the American Lawyer," an address delivered by Mr. Taft as president of the New York Bar Association, January 16, 1920. This might well become a reading in any college course in American government.

Mr. Taft's strong argument against "The Recall of Decisions" is impaired by his attempted justification of such decisions as the Jacobs case (98 N. Y. 98) and the Williams case (189 N. Y. 131). Here he begs the question completely. Why not frankly admit that such



decisions were anachronisms—bad law? Neither the constitution of New York nor that of the United States has been changed by a syllable in respect to the sections discussed in these cases; but does Mr. Taft believe that such decisions as these would be made today?

Not the least interesting part of the work is the comment on Roosevelt, in the introduction. But chiefly the historian of about the year 2050 will give thanks to Mr. Taft for preserving to him much valuable material.

JAMES P. RICHARDSON.

*Dartmouth College.*

*Fair Value: The Meaning and Application of the Term "Fair Valuation" as used by Utility Commissions.* By HARLEIGH H. HARTMAN. (Boston and New York: Houghton Mifflin Company. Pp. xix, 263.)

This book is one of the most recent Hart, Schaffner & Marx prize essays. The author is lecturer on Illinois public utilities law in Northwestern University. In the chaos of valuation literature and valuation practice, particularly in these times of abnormal price conditions, Hartman's book stands out like a beacon light. He calls us back to fundamentals. As his subject deals with the public relations of private property devoted to public use, he has to start out with a definition. "Property," says he, "is a bundle of rights, the units of which are constantly changing with economic changes and their legal recognition. Property as distinct from possession implies exclusive control. Such control can exist only by consent of the state. The sanction of society and force of government are necessary to protect the owner's interest. The presence of an organized social state is essential to the existence of private property. It is purely a social concept, and the rights constituting property at any given time depend upon social arrangements sanctioned by the state with a view to the general welfare."

With respect to public utilities, he says: "The basis of regulation is to be found in the governmental nature of the service. The social side of the private property devoted to the public use necessarily becomes dominant."

Throughout his essay, the author keeps these fundamental concepts before him. Public utilities are for public service. Private property exists only on sufferance. Regulation necessarily means that in case

of conflict the public interest shall prevail. "The rates fixed," says the author, "must be low enough to encourage general use of the service, or all other features of regulation will be nullified. This phase of regulation is all-important. It is only through general use that the utility service can build up the community and promote the public welfare."

After reviewing in detail the development of the "fair value" rule in the decisions of courts and commissions, he reaches the conclusion that "the aim is to determine the actual, unimpaired, reasonable investment in property used and useful in rendering the public service," and that "for this purpose the original-cost appraisal serves best."

Hartman's book will be indispensable to valuation experts and regulating authorities.

DELOS F. WILCOX.

*Elmhurst, N. Y.*

*The Non-Partisan League.* By ANDREW A. BRUCE. (New York: The Macmillan Company. 1921. Pp. viii, 284.)

In the REVIEW for August, 1920, will be found a sketch in which my colleague, Professor J. S. Young, outlined the contents of Herbert E. Gaston's book, *The Non-Partisan League*. That book was written by one who has actively supported the league; the work here under consideration is by a man who is frankly opposed to the league's leadership and to many of its policies. Judge Bruce was chief justice of the North Dakota supreme court when the league first made its bid for power in that state. He knows and describes for us the causes of the movement, its membership, its leadership, and its aims. He traces its rise from small beginnings until it dominates every branch of the state government. He follows its course during its brief period of supremacy, and he predicts the reverse in fortunes which has since overtaken it. As this brief review of his book is being written, the chief Non-Partisan officials of North Dakota have been retired to private life by means of the recall, and Mr. Townley, most potent of the Non-Partisan political leaders, has begun to serve a sentence in a Minnesota county jail for violation of the state's sedition law. Temporarily the league is in almost complete eclipse.

The author's thesis is that there is a sharp line of cleavage in thought and purposes between the leaders and the members of the league. The great body of farmer members are pictured as a conservative, land-owning class, primarily interested in buying cheaper and selling dearer,

and wedded to the institution of private property. The leaders, on the other hand, are described as "consistent socialists," forming a "socialist hierarchy" which has misled the members and is really using the league as an instrument for bringing about "state socialism in all things except in farm lands" and as "an entering wedge for the American International." The fact that many of the leaders are former Socialists is hardly a sufficient demonstration of the proposition stated; their actions and speeches since joining the league show them to be less affiliated in thought with the Socialist than with the defunct Populist party, and to be working for public-ownership and agrarian reforms patterned after the New Zealand model. On the other hand the former members of the league have undoubtedly been brought largely to the acceptance of the same views. While recalling the Non-Partisan officials at the recent election the voters failed to rescind the program of state-ownership legislation. "Europeans would call this [program] State Socialism," Bryce remarks in *Modern Democracies*, "but it is meant to be merely a practical attack on existing evils, and there is no sympathy, beyond that which one kind of discontent may have with another, between the Socialistic Communism of a theoretic European type and these land-owning farmers who are thinking of their own direct interests."

Judge Bruce would be the last to claim that his work is the final work on the Non-Partisan League. Properly described, his book is the spirited chronicle and critique of a man who was active in the struggle. His first-hand knowledge has enabled him to put his finger upon the greatest weakness of the league under its recent leadership, namely its almost complete lack of political morality. Urged by an irresistible impulse to accomplish its social and economic program, the league's leaders and the league-elected state officials rode rough-shod over whatever laws, institutions, private rights, or public understandings stood in their way. While feigning non-partisanship, they were most violently partisan. They practically nullified state primary laws. They denounced "boss" control in other parties, yet refused for years to give the members any real control over the Non-Partisan League. They ruled the legislature through a rigid caucus system. They dragged the courts into politics. They suppressed the opposition press, seized coal mines without color of law, and even attempted to amend the state constitution by ordinary legislative act. It is useless to give further details. Judge Bruce presents them all and it must be recognized that he has here made a distinct contribution to our knowledge of this interesting and still influential movement.

WILLIAM ANDERSON.

*University of Minnesota.*

*The Port of New York.* By THOMAS E. RUSH. (Doubleday, Page and Company. 1920. Pp. xiv, 358. Illustrated.)

This is a rather rambling, sketchy, gossipy account of the port of New York—its historical development, its present activities, its needs. The author's stated purpose is to make better known the national importance of the country's greatest port. A great deal is said about the indifference of various agencies—political, civic and commercial—to the promotion of the port, and particularly it criticizes business interests for failure to more effectively support the recently proposed New York and New Jersey "port treaty."

The first chapters of the book are historical, beginning with the earliest discoveries. Chapters are then devoted to such topics as piracy and smuggling; the official activities of the customs service, particularly the work of the surveyor's office; the American merchant marine; fortifications; immigration; harbor improvements; and so on. The chapter on a free zone is a summary of the tariff commission's report on that subject. Another chapter treats of the teaching of "port truths" in schools and colleges. The above will sufficiently indicate the wide range of topics touched upon. The book, confessedly, offers little that is new. The fragments of information assembled may possibly aid in creating a greater popular interest in New York's port development; but beyond this its service is limited.

G. B. ROORBACH.

*Washington, D. C.*

#### BRIEFER NOTICES

Coming as it does close to the three hundredth anniversary of the landing of the Pilgrims, *The Founding of New England*, by James Truslow Adams (Boston: The Atlantic Monthly Press, pp. 482), is a most timely book. Drawing upon a wealth of material much of which has come to light only in recent years, the author deals chiefly with the origins and history of New England to the close of the seventeenth century, discussing the discovery and settlement of the region; "the genesis of the religious and political ideas which there took root and flourished; the geographic and other factors which shaped its economic development; the beginnings of that English overseas empire, of which it formed a part; and the early formulation of thought—on both sides of the Atlantic—regarding imperial problems." The struggles and history of the early settlements are retold with new knowledge and a new point of view, with

emphasis upon the social and economic factors rather than upon theological or theocratic ideas. Of particular interest to the student of political science are the chapters on imperial control and administrative experiments within the colonies, especially the attempts at consolidated administration. The whole book is a most scholarly and interesting narrative with scarcely a dull page from beginning to end. It is hoped that the author will carry out his intention of making this volume the introduction to a series which will bring the history of New England down to date.

*The History of the San Francisco Committee of Vigilance of 1851* (University of California Press, pp. xii, 543), by Dr. Mary Floyd Williams, is a reinterpretation of the social life of California during the crisis of the gold fever. Earlier accounts, Charles Howard Shinn's *Mining Camps* (1885), Josiah Royce's *California* (1886), and H. H. Bancroft's *Popular Tribunals* (1887), have in common a distinctly moral point of view. They interpret the gold period in uncompromising terms of right and wrong. Dr. Williams, in accord with later ideals of historical research, is less inclined to pose as a dispenser of halos and gridirons. She has studied more carefully and impartially than her predecessors the source materials, particularly the archives of the committees of vigilance, and has edited the minutes and miscellaneous papers, financial accounts and vouchers which appear as volume four of the Publications of the Academy of Pacific Coast History, under the title *Papers of the San Francisco Committee of Vigilance of 1851* (University of California Press, pp. xvi, 906). The years spent in collecting, studying and editing these documents have acquainted her with the men and women of this earlier age, and she regards them as little better or worse than their children of today. She therefore seeks to account for their deeds by explaining the social conditions which impelled them to action. The California settlement is treated as similar in many respects to earlier extensions of the frontier of American democracy. Here as elsewhere there was common acceptance of the theory that the state was created by a voluntary compact between contracting parties who possessed inherent rights. Closely linked with this was the distrust of a centralized form of government, a demand for utmost liberty of action in domestic affairs. But local government was notoriously weak in suppressing disorder in the outer line of settlements and this fact explains in large measure the necessity for the San Francisco Vigilantes as well as for other self-appointed defenders of "law and order" in other frontier communities.

*The Journal of the Missouri Constitutional Convention of 1875* has just been published by the State Historical Society of Missouri (2 vols., pp. 954). The journal proper is prefaced by a historical introduction on constitutions and constitutional conventions in Missouri, by Isidor Loeb of the University of Missouri, and a biographical account of the personnel of the convention by Floyd C. Shoemaker, and is followed by an appendix giving data as to the members of the convention and a list of the convention committees, and by a comprehensive index. The work has been printed in convenient form and will be of use to historians and other students, and will be of special service in connection with the proposals for a new convention in Missouri to revise the state constitution.

George Young formerly of the British diplomatic corps with twenty years of experience to his credit has written a short book on *Diplomacy Old and New* (Harcourt, Brace and Company, pp. 105) as one of the latest of the series of Handbooks on International Law edited by Lowes Dickinson. The book is largely a criticism of the British diplomatic service with constructive suggestions for reform. As stated by the author: "The public is revolting against orthodox diplomacy; much as it is against orthodox divinity, and for the same reason—its failure to secure peace on earth to men of good will" (p. 15). The beginning chapter on diplomacy and personnel recommends a number of administrative changes for improving the make-up of the service and bringing new blood into its ranks. The second chapter criticises the present practice of ignoring Parliament in foreign affairs and pleads for more democratic control of foreign policy through the creation of a parliamentary committee on foreign affairs. The final chapter on diplomacy and peace contains a plea for educating public opinion on matters concerning foreign relations and also recommends the establishment of a school of foreign affairs in London for the training of young men for the diplomatic service. No matter how far the reader may differ from Mr. Young in his criticisms of British diplomacy he will find a brilliant analysis of present conditions and much food for thought in this book.

*The Neutralization of States: A Study in Diplomatic History and International Law* by Clair Francis Littell (Meadville, Pa. The Author. Pp. 181) is a monograph which, as the title indicates, deals with subjects made more lively by the war and the Treaty of Versailles, especially as concerns the past history and present and future status of Belgium, Switzerland and Luxemburg. The study is really a history

of permanent neutrality, taking up briefly the idea of neutrality from the days of Grotius, armed neutrality, its development by the United States, and the successful establishment of permanent neutrality in 1815, and describing various joint acts for its guarantee. A chapter is devoted to each of the permanently-neutralized states, Switzerland, Belgium, Luxemburg, and the Congo Free State, and to the various miscellaneous neutralities, such as Cracow, Savoy, Greece, and Samoa. The remainder of the monograph deals with the abstract and theoretical considerations connected with the subject as a part of international law and is a "technical study of the rights and duties of permanent neutrality." In conclusion the author cannot predict the continuance of permanent neutrality as one of the institutions of Europe, which seems to him to depend upon the outcome of the "present attempt at World Organization." A six page bibliography and index complete this study.

*The New World of Islam*, by Lothrop Stoddard (New York: Charles Scribner's Sons. pp. 355), has for its main theme the Mohammedan revival of the nineteenth century and the spread of liberal principles and western progress in the Moslem world during the present century. By way of introduction the author sketches briefly the rise and decline of the old Islamic world and then traces in a lucid and readable manner the spread of Pan-Islamic sentiment and the political, economic and social changes that have recently come about in the Mohammedan countries of the East. There are interesting chapters on nationalism in Turkey, India, Arabia and Persia and on the spirit of social unrest that is now prevailing in the Near and Middle East where Bolshevik activities have been increasingly apparent since the beginning months of 1919. Mr. Stoddard is of the opinion that this latter development is fraught with considerable danger but concludes that "if there is much to fear for the future, there is also much to hope."

As the eighth edition of the *Manuel de Droit International Public*, by M. Henry Bonfils, M. Paul Fauchille has prepared a comprehensive *Traité de Droit International Public* in two volumes. Volume II on war and neutrality has been published first (Rousseau & Cie, pp. 1095), and Volume I on the international law of peace is announced as in press. This work includes a complete revision of the earlier work of M. Bonfils, and the volume published includes the important and far-reaching events and problems which arose during the world war. The concluding chapter deals with the international law of the future.

*Thoughts on War and Peace*, by Nicholas Petrescu (London; Watts and Company, pp. 124) contains "an inquiry into the conceptions prevailing in foreign politics." The author endeavors to prove that we can have no "new order" in international relations until we change altogether our conceptions of war and peace. The trouble with the League of Nations, he believes, is that it rests on national conceptions which are out of consonance with the ideals of humanity.

Various lectures by well-known English scholars on *The Evolution of World Peace* have been brought together under the editorship of F. S. Marvin (Oxford University Press, pp. 191). In addition to three lectures by the editor, the volume includes important and interesting discussions of "The Work of Rome" by Sir Paul Vinogradoff, "Grotius and International Law" by G. N. Clark, "The French Revolution as a World Force" by G. P. Gooch, "The Congress of Vienna" by C. R. Beagley, and "An Apology for a World Utopia" by H. G. Wells. The names of these contributors afford a sufficient guarantee of high excellence.

In *The Isolation Plan* by William H. Blymyer (Cornhill Publishing Co., Boston, pp. 152), the author argues that only one kind of disarmament is practicable—general disarmament—and that under no other arrangement can the peace of the world be assured. With general disarmament should go universal arbitration of disputes and non-intercourse with malefactor states.

The most interesting pages in James A. Wood's *Democracy and the Will to Power* (Alfred A. Knopf, pp. 245) are in the Introduction, where H. L. Mencken gives a brief digest of the author's argument and adds his own approving comments. The volume embodies, we are told, "the first serious attempt, at least by an American, to get at the fundamentals of the democratic process of government." The attempt, apparently, has been quite successful from the standpoint of those immediately concerned, for democracy stands revealed as a sham and a swindle. Mr. Wood believes that democracy, in actual practice, has little to do with the determination and execution of the popular will—or even the will of the majority; it is merely a conflict between minority groups which are enabled by various devices to bend the majority to their purposes.



The series of six handsome volumes, issued by the Yale University Press, under the general title *How America Went to War*, has now been completed. The entire series has been written by Hon. Benedict Crowell, formerly assistant secretary of war, and Captain Robert Forrest Wilson. The first three volumes, which appeared several months ago, bearing the titles *The Road to France* and *The Giant Hand* were noticed in previous numbers of the REVIEW. They have now been followed by two volumes on *The Armies of Industry* and a concluding volume on *The Demobilization*. Taking the series as a whole it constitutes a most vivid, accurate and interesting account of America's effort in the great crusade.

The two volumes on *The Armies of Industry* deal with the procurement and mobilization of munitions and supplies, with an opening chapter on war department organization. The material has been wholly drawn from official sources and is therefore trustworthy; but it is not put together after the fashion of official reports. On the contrary the facts and figures are woven together into an interesting story wherein the personalities stand out clear and prominent. It is an amazing story all the way through, and one that future generations of Americans will appreciate. Our people never adequately realized, during the years 1917-1918, how large a fraction of the nation's energy and resources were being thrown into the scale. When Ludendorff whimpered that "those Americans know how to make war," he expressed a correct although a somewhat belated conclusion. Not least among America's war achievements, moreover, was the demobilization, as Messrs. Crowell and Wilson demonstrate. It was in this management of the "Transatlantic Ferry" that the military organization reached its peak of efficiency. The illustrations in these books, as in the earlier volumes of the series, are entitled to the highest commendation. No such set of war pictures has been brought together elsewhere. As masterpieces of bookmaking these volumes would be difficult to excel.

Under the auspices of the Carnegie Endowment for International Peace, the Oxford University Press continues its series of highly useful volumes on various topics of international interest. Among the more recent of these publications are the second and third volumes of *The Proceedings of the Hague Peace Conferences*. The first volume in this series was issued during 1920 and dealt with the plenary meetings of the conference. The second volume covers the meetings of the first

commission, while the third volume includes the sessions of the second, third and fourth commissions. In all cases the proceedings, acts and documents are translated from the official text. Another series of two volumes includes the *Treaties and Agreements with and Concerning China, 1894-1919*. The compiling and editing of these documents is the work of Mr. John V. A. MacMurray of the United States Diplomatic Service, who served for some time as secretary of the American Legation at Peking.

*The Economic Causes of Modern War*, by John Bakeless, is published by Messrs. Moffat, Yard and Co. (pp. 265). The book is an outgrowth of an essay which won for its author the David A. Wells Prize at Williams College. It deals with the economic motives of colonial rivalry and indicates the dominating part which economic motives of all sorts have played in international relations since 1878. There are chapters on "The Prevention of War by International Finance" and on "The League of Nations."

*The Colonization of North America*, by H. E. Bolton and T. M. Marshall (Macmillan's, pp. 609), includes a narrative of European expansion in North America down to 1783. The authors point out that most American books in this field have dealt with the colonization of the New World almost wholly from the English standpoint, neglecting the French and Spanish phases. So this book takes a broader range and by so doing presents many familiar things in a new light. They show, for example, that there was an Anglo-Spanish and a Franco-Spanish, as well as an Anglo-French struggle for the continent. Spanish colonization, however, gets a good deal more space in this volume than does the French attempt at empire-building. The sixteen pages which give a survey of the French efforts on the St. Lawrence and on the Mississippi Valley are little more than the barest chronology (pp. 86-102) and not always accurate at that. It is not correct to say that "Talon established a type of feudalism" in New France (p. 92); there were scores of seigniorial grants before Talon came. The narrative is almost wholly chronological with relatively little discussion of the points of contact between the various colonial systems.

The Carnegie Institution at Washington has published the first of a series of volumes of *Letters of Members of the Continental Congress*, edited by Edmund E. Burnett (pp. 572). This volume includes letters from August 29, 1774 to July 4, 1776. Three other volumes are nearly ready for printing.

A new volume in the Modern Student's Library, published by Messrs. Charles Scribner's Sons, contains *Selections from the Federalist* by Professor John Spencer Bassett (pp. 331). The selections include more than two-thirds of the entire list of articles, prefaced by a good introduction.

The fifth volume of Professor Edward Channing's notable *History of the United States* has been published by The Macmillan Company. It covers the period of transition, 1815 to 1848, and deals with many matters which are of the highest importance to the student of political science,—the urban migration, the Monroe Doctrine, the political seethings of 1824–1828, Jacksonian democracy, nullification and the western land questions. This volume has all the sterling qualities of its four predecessors—accuracy, sense of proportion and lucidity of narrative. In addition, it places many important events of the period in an entirely new setting. Few of the striking political episodes with which the era was filled have been left by Professor Channing just as they were before he set his hand to the task of discussing them. The readjustment of emphasis resulting from the author's study of the source material is in some cases quite noteworthy and should be of great interest to students of American political development.

Messrs. Houghton Mifflin Company are the publishers of Professor Frederic L. Paxson's *Recent History of the United States* (pp. 603). The volume covers the era from 1877 to the present time. It is by no means a mere chronicle of American politics that Professor Paxson gives his readers; on the contrary there is more attention to economic and social development in this volume than in most books of its type. A very substantial proportion of the book, more than one-fourth, is devoted to the course of events since 1914.

The Houghton, Mifflin Company have brought out under the title: *Political Profiles from British Public Life* (pp. 256) a series of sketches of Herbert Sidebotham, the parliamentary correspondent of the *London Times*. The eighteen chapters deal with as many prominent figures in British politics, portraying them sharply but without the virulent partisanship which marked *The Mirrors of Downing Street*. Not least in interest and in permanent value, however, is the discussion of Parliament as an institution, which the author has incorporated in his introduction and his postscript. The former, which is entitled "The Press

Gallery—Fore and Aft,” gives an all-too-brief glimpse of the House of Commons at work; the postscript on “The Future of Parliamentary Government” suggests some ways in which parliamentary methods ought to be improved. The author points out that the powers of the Executive have been unduly increased at the expense of Parliament and argues for an increased actual control on the part of the Commons.

A revised edition of Professor C. M. Andrews' *Short History of England* (pp. 506) has been published by Messrs. Allyn & Bacon. The revised narrative comes to the close of 1920. An excellent chapter on “The Government of the British Empire” is added.

The University Tutorial Press has issued a fourth (revised and enlarged) edition of Albert E. Hogan's *Government of the United Kingdom*. The new edition includes the changes which were made during and after the war.

The fourth of a series of small volumes on *Practicas Parlamentarias: las Asambleas Legislativas* has been published by Vicente Pardo Suarez (Habana, Rambla Boñza y C<sup>a</sup>, pp. 250). This volume deals with *El uso de la palabra y la disciplina*, and after brief discussions of methods in the various countries of Europe and America, there is a short summary on legislative methods and the limitation of debate.

Professor E. A. Ross's *Russian Bolshevik Revolution* (Century Co., pp. 302) is an impartial, objective account of the Russian upheaval from March 1917 to January 1918—the period during which the Kerensky government was set up and toppled over. Professor Ross was in Russia while these things were going on and saw at first hand much of what he writes about. It goes without saying that the book is written in his clear, vigorous, and colorful style.

A useful volume on *Mexico and its Reconstruction*, by Chester Lloyd Jones, former professor of political science in the University of Wisconsin, has been published by D. Appleton and Company (pp. 330). In addition to chapters on population and economic problems, this contains three chapters on the government of Mexico, dealing with the executive government, elections, and the state and local governments; and also contains chapters on colonization, foreigners in Mexico and Mexican-American relations.

Dr. Fred Wilbur Powell has published a small book on the *Railroads of Mexico* (The Stratford Company, pp. 226). This is in three parts; the first dealing with the conditions of the present and the period following the Diaz régime; the second giving an outline survey of the transportation history of Mexico, and the third contains one chapter on relations with the government and another on results, political and economic. There is an extended bibliography and a brief index.

Walter Flavius McCaleb, sometime lecturer in money and banking at Columbia University, and author of *Present and Past Banking in Mexico*, has published through Harper and Brothers a book on *The Public Finances of Mexico* (pp. xiii, 268). Mr. McCaleb has gathered most of his material first hand by a study of archives, manuscripts, and financial reports and by personal interviews with public officials, bankers and others familiar with the subject. The author has developed his account historically, beginning with the finances under the Spanish régime, carrying them on down through the periods of Santa Anna, the Mexican War, and French intervention to the rule of Diaz, who was able to produce some degree of order out of the chaos which had existed up to that time. In conclusion, Mr. McCaleb points out the great disorder into which the fiscal system of Mexico has fallen under Huerta and Carranza, suggests certain remedies for present conditions and makes forecasts as to the future.

A. C. Wiprud, vice-president of the Federal Land Bank of St. Paul has written an account of *The Federal Farm Loan System in Operation* (Harper and Brothers, pp. xix, 280.) to which William G. McAdoo, former secretary of the treasury, has contributed an introduction. This book includes an excellent account of the federal farm loan system, the methods of financing and the various kinds of bonds that are issued. A clear and concise description is also given of the procedure according to which loans are made to the farmer and the advantages of the scheme especially to the small farmer. The author is of the opinion that the federal farm loan system will go far toward solving the economic and social problems of our rural communities and that it will play an important part in checking the present cityward trend of population. About half of the book is given over to an appendix containing the text of the Federal Farm Loan Act carefully digested and indexed, and the utility of the work is enhanced by a seven page bibliography on rural credits and related subjects.

A volume which deserves attention at this time because of the importance of the subject matter is *The American Railway Problem* (The Century Company, pp. 474.) by I. Leo Sharfman of the University of Michigan. The author first traces briefly the history of railroads and of railroad regulation in this country prior to 1914. The remainder of the book provides a thorough analysis of the railroad problem as it presents itself today. The conditions and results of federal control and such questions as railroad nationalization, unification of lines, rates and financial returns, labor and the continuity of service, the Transportation Act of 1920, and the adjustments which accompanied the restoration of railroad properties to private management are set forth in detail. Public regulation is regarded as the best policy, but Professor Sharfman believes that the government must adopt a less restrictive program and allow a reasonable degree of independence in management if private ownership is to be continued.

The title *Is America Safe for Democracy*, by William McDougall (Scribners, pp. 218) does not give an accurate clue to the contents of this book, which contains six lectures on "Anthropology and History" delivered by the author at the Lowell Institute in 1920. The main argument of the volume is based upon the evidence adduced by the author to prove "that the upper social strata as compared with the lower, contain a large proportion of persons of superior natural endowments." His conclusion is that the great condition of the decline of any civilization is the inadequacy of the qualities of the people who are the bearers of it.

Paul Kester's *Conservative Democracy* (Bobbs-Merrill, pp. 82) is an endeavor to contrast socialism with democracy, in order that their relative merits may be clearly brought out. The author finds that democracy makes much the better showing. The discussion is simple and readable.

Economic history of a somewhat new type is embodied in Isaac Lippincott's *Economic Development of the United States*. (Appletons, pp. 691). The plan of the book is such that not only does the author trace the developments in each particular field of industry but he carries along the continuous and related growth in other fields. Particular attention is given to the newer features of economic development, such as the growth of organized markets, the new methods of business

management, the broadening of commercial education, and so on. The references at the end of each chapter have been selected with good judgment.

Henry Holt and Company are the publishers of Thurmin W. Van Metre's *Economic History of the United States* (pp. 672). The book contains a survey of American economic development from the period of discovery and exploration down to the present day. The material is skilfully arranged and the narrative is interestingly written. As a text for use in college courses this volume is sure to be of service.

Ginn and Company have brought out a new edition of Professor Joseph French Johnson's *Money and Currency* (pp. 425), a book which many teachers have found very useful during the past fifteen years. The new edition contains an analysis of the federal reserve system and provides space in the appendices for some interesting statistical tables.

A school text on *Economic Civics* (Allyn & Bacon, pp. 331) by R. O. Hughes is "the result of a conviction that an understanding of elementary economic principles is necessary to good citizenship." Like the same author's earlier book on *Community Civics* the book is well put together and written in teachable form.

*The Philosophy of Citizenship* by E. M. White (Macmillan, pp. 119) is about what its title implies—a general survey of the fundamentals of citizenship and the chief social ideas. The author, who is a lecturer on civics for the London County Council believes that the range of his subject "extends outwards" from the family to the commonwealth of nations. He repeats, as an appropriate motto for the teacher and student of civics, the aphorism of Terence: *Homo sum; humanum nihil a me alienum puto.*

The bureau of extension of the University of North Carolina has issued a bulletin by Howard W. Odum on *Community and Government* (pp. 106) which is intended to serve as a manual for teachers of government and citizenship in the public schools of that state.

A volume on *Rural Organization* (pp. 250) by Professor Walter Burr of the Kansas state agricultural college is included in the recent list of the Macmillan Company. It deals, not only with rural organization and institutions, but also with such topics as rural marketing, transport, finance, education and sanitation.

*The Short Constitution*, by Judge Martin J. Wade and Professor William F. Russell (American Citizen Publishing Co.; Iowa City, pp. 228) in an elementary book designed for use in Americanization work. It is in large part a simple presentation of the federal Constitution, and particularly of the guaranties contained in the bill of rights.

F. M. Taylor of the University of Michigan has revised his *Principles of Economics* (The Roland Press, pp. 577) so as to bring it down to date. The most important changes are in regard to the prices of primary factors.

A syllabus intended to accompany Carlton J. H. Hayes' two volumes, *A Political and Social History of Modern Europe*, has been prepared by Edward Meade Earle, under the title of *An Outline of Modern History* (The Macmillan Co., pp. x, 166). Helpful suggestions in regard to methods of study, note-taking, and the writing of historical essays are given and the book also contains a dozen or more selected map studies.

The Carnegie Foundation for the Advancement of Teaching has issued a study on *Training for the Public Profession of the Law* by Alfred Z. Reed (pp. xviii, 498). The work is treated historically and is divided into eight parts. Part I is in the nature of a general summary describing briefly the comparative development of the law and the legal profession in England, Canada and the United States. Following this, the other parts of the study contain a detailed account of the origin and history of law schools in the United States, the evolution of the law school curriculum and of law school methods, the origin and history of bar associations, recent tendencies and a criticism of the present methods of legal education.

*Prices and Wages in the United Kingdom, 1914-1920*; by Arthur L. Bowley (Oxford: The Clarendon Press, pp. xx, 228), describes the movements in prices and rates of wages in the United Kingdom from the beginning of the war to the summer of 1920. This is one of the series planned by the Carnegie Endowment for International Peace covering the economic and social history of the World War. The general editor of the series is Dr. James T. Shotwell. The work is a vast undertaking—about one hundred monographs are already planned and there must be many more to follow since there remain the problems of Germany yet to be confronted. The writers will all be expected to adopt a



purely scientific attitude and to show no national bias. Never before has the story of a great war been covered in this way, and the library to be created will have unique value. A. B. Keith's *War Government of the British Dominions* and J. A. Salter's *Allied Shipping Control* which have been reviewed at length in this REVIEW also belong to this series.

*Ye Olden Blue Laws*, by Gustavus Myers (The Century Company, pp. 274), is a careful and amusing account of the blue laws of colonial days. Mr. Myers never fails to point out that the blue laws did not work and that they were more honored in the breach than the observance; nor can the reader fail to perceive that the author disapproves of all blue laws and that he hopes that those now on our statute books and those that may be put there may meet the same fate as those which he describes.

Lord Asquith's *Industrial Problems and Disputes* (Harcourt, Brace and Company, pp. x, 494) will interest more readers than those concerned with labor problems or industrial history. In his position of Chief Industrial Commissioner, settling the most important British labor disputes of the last twenty years, the author has first hand knowledge of important political developments, especially the extension of government functions. He declares that the Asquith and Lloyd George governments had no labor policy, and would have the interference of the politician in industrial struggles rigidly curtailed.

*Industrial Government*, by John R. Commons and other members of the department of economics of the University of Wisconsin, published by the Macmillan Company (pp. 423) is the result of an empirical study of the relations of employers and employees in selected American industrial establishments. The first part of the volume contains reports on eighteen of the thirty plants visited, and the remaining five chapters give the investigator's own observations or inferences.

A volume on *Principles of Comparative Economics* has been published by Radhakamal Mukerjee, professor of economics and sociology at Lucknow University (P. S. King & Son, pp. 336) with a preface by Senator Raphael-Georges Levy. This differs from the usual works on economics in the emphasis laid on the study of regional factors and on relativity in economic theory.

*What is Socialism?* by James Edward Le Rossignol (New York: Thomas Y. Crowell Co., pp. x, 267) presents a searching arraignment of socialism as founded on the doctrines of Karl Marx and is intended as an antidote to the arguments and conclusions of socialist writers and workers. The author refutes the idea that there is a "scientific socialism." He is of the opinion that socialism as a system of thought "with all its plausibility and apparent consistency, is a mere caricature of the industrial world as it really is," and considered as a form of actual government it is "a highly imaginary scheme of social organization, which, socialists believe, would be a panacea for most, if not all, the ills that flesh is heir to." The author has a manner of presenting material in an interesting way which has enabled him to make his book readable throughout. Taken as a whole it is one of the best books that has appeared on this controversial subject.

In *The Larger Socialism*, by Bertram Benedict (The Macmillan Company, pp. 243), the present Socialist movement is indicted on the ground that it puts too much emphasis upon material welfare to the neglect of the loftier structures of culture which should be built upon such a foundation. "A Socialist state must ask, 'What kind of a man is Jones?' far more anxiously than it will have previously asked 'How much does Jones earn?' " This, writes Mr. Benedict, is a non-Marxian point of view which the Socialist Party of America should espouse.

A summary of the laws and divisions relating to the *Taxation of Federal, State and Municipal Bonds* (pp. 115) has been compiled by John H. Hoffman and David M. Wood of the New York bar (printed by the authors, 1619 Equitable Building, New York). While intended, in the main, as a guide to investors, the compilation will prove useful to students of public finance as well.

Students of public finance and state government will find the monograph on *State Taxation of Personal Incomes* by Alzada Comstock in the Columbia University *Studies in History, Economics and Public Law* (New York, 1921, pp. 246) of more than passing interest. The study traces the evolution of the state income tax and describes in more or less detail the general features and workings of the system in certain states such as Wisconsin, Massachusetts, New York, Missouri, Dela-

ware and North Dakota. Some of the more important problems of administration are given special consideration as rates of taxation, exemptions, double taxation and the distribution of proceeds between the state and local governments. It is the opinion of the author that under "financial conditions of the present the modern income tax must be regarded as one of the most productive and one of the most satisfactory sources of state revenue."

Thorstein Veblen has reprinted from the *Dial* a series of articles dealing with the American industrial situation, giving them the title: *The Engineers and the Price System* (B. W. Huebsch, pp. 169). The articles deal with such topics as sabotage in industry, the dangers to the existing economic organization and the chances of a revolutionary overturn.

In a readable small volume entitled *What Japan Wants* (Thomas Y. Crowell Company, pp. 154), Professor Yoshi S. Kuno of the University of California sets forth the ambitions of Japan, at home and abroad, as the author understands them. The most striking chapter of the book is the opening discussion which deals with Japanese-American relations.

A study of *Japan and the California Problem*, by T. Iyenaga and K. Sato (pp. 249), has been published by Messrs. G. P. Putnam's Sons. The book deals largely with Japanese immigration and sets forth a series of recommendations for the adjustment of present difficulties. The appendices contain many useful tables and documents together with an exhaustive bibliography of the subject.

The latest volume in the *Makers of the Nineteenth Century*, published by Messrs. Henry Holt and Co., is a life of *Moltke* by Col. F. E. Whitton (pp. 319). A large part of the book, quite naturally, is devoted to the campaigns of 1866 and 1870, but Moltke's earlier and later years are not neglected. Col. Whitton is a sympathetic biographer, on the whole, but he is no hero-worshipper. The book is written in readable vein although the temptation to load the narrative with details has not always been resisted.

The *Correspondence of Sir John MacDonald*, sometime Prime Minister of Canada, has been published by Messrs. Doubleday, Page and Co., under the editorship of Sir Joseph Pope (pp. 502). Rarely has a

personage of such distinguished station left a more complete record of his activities than this Scottish-Canadian bequeathed to posterity. He was a prolific writer of letters; and he received as many as he sent. The correspondence covers a long period of active service and throws many interesting sidelights upon the course of Canadian political development during the second half of the nineteenth century. The editing has been admirably done.

*The Reminiscences of a Raconteur* by George H. Ham (Musson Book Co., Toronto, pp. 330) is a readable volume dealing with a wide variety of topics from Canadian politics to railroad building. It contains a generous assortment of anecdotes, and stories old and new, about politics and politicians on both sides of the northern border.

The first volume of *A History of the Canadian Bank of Commerce* by Victor Ross, has been issued by the Oxford University Press (pp. 516). It is a good deal more than the history of a single bank, a generous portion of the volume being devoted to the development of the Canadian banking system in general, especially during the earlier years of the nineteenth century.

A useful volume entitled *Great Cities of the United States* (pp. 309), by Gertrude Van Duyn Southworth and Stephen Elliot Kramer is issued by the Iroquois Publishing Co., of Syracuse, N. Y. The book contains a brief historical and descriptive account of thirteen large American cities with emphasis upon their industrial and commercial activities, in other words a series of short municipal biographies. Many interesting illustrations accompany the text.

## RECENT PUBLICATIONS OF POLITICAL INTEREST

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#### AMERICAN GOVERNMENT AND PUBLIC LAW

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## THE UNITED STATES AND WORLD ORGANIZATION

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On what conditions should the United States enter a world organization for the maintenance of peace? Viewing the question broadly, should not the United States enter world organization upon one condition, namely, that the organization give promise of the utmost achievement in the maintenance of peace? Unless we are prepared to repudiate the avowals of our statesmen and reverse what is perhaps the oldest and most fundamental tradition of our foreign policy, can we consistently insist upon any other condition than this one?

A good deal has been said of late about the "American idea" in international relationships. It has been suggested that the "American idea" was defined in Washington's farewell address, in the Monroe Doctrine, or in America's participation in the peace conferences held at The Hague. It seems evident, however, that this involves a confusion of the idea with its occasional manifestation in action. If there is any one outstanding "American idea" which has inspired our foreign policy from the beginning—any quintessence of principle which may be derived alike from the first neutrality proclamation, the farewell address, Monroe's message, Hay's pronouncement for the open door, or America's participation in the conferences at The Hague—that idea is the maintenance of just and honorable peace.

If peace has been our loadstar, expediency has been our guidepost. One hundred and twenty-five years ago, in the year of Washington's farewell address, "our detached and distant situation" made a policy of aloofness the most effective way of maintaining peace in the western world. One hundred years ago, when the political stage was being set for Monroe's epoch-making message, the governmental systems prevailing elsewhere were "essentially different . . . from that of America" and any attempt to extend such systems to the western hemisphere would have been "dangerous to our peace and safety." At the end of the century, on the other hand, Secretary Hay found it the part of wisdom to "act concurrently with the other powers" in protecting interests and restoring peace in China. And only recently "the utmost practicable coöperation in counsel and action" with the states then at war with Germany was thought necessary to "vindicate the principles of peace and justice in the life of the world." While the aspiration for peace has been manifested in each great pronouncement, the measures taken have been wisely determined by time and circumstance.

It seems a mere truism to say that time and circumstance are now compelling us to place new emphasis upon the importance of world organization. The world needs peace and security for peace as the world has never needed it before. Nor is this a circumstance which the United States can safely ignore. The progress of events has been irresistibly "interweaving our destiny" with that of the rest of the world, so that the world's need has become our need, and from motives generous or selfish, as you please, we must view the problem very much as the rest of the world is obliged to view it. In the light of these reflections, should we not reformulate the question and inquire, What sort of world organization promises most in security for peace?

There is at least one consideration which should never escape us. The organization of the world which promises most in security for peace will be neither the state of nature nor the super-state, neither Hell nor Utopia. If the idea of an international state of nature was conceived as the beatification of chaos, it has become in the modern world a monstrosity of the imagination.

In the place of chaos there has evolved a vaguely defined and somewhat protoplasmic organization of the international community. This must provide the essential groundwork. The world organization of the future, far from resembling Utopia, must consist of "a duller and heavier structure placed logically upon the foundations of the existing system."

It is possible, of course, to build upon the existing foundations and yet choose wisely or unwisely in planning the superstructure. There are those who believe that we are confronted in this respect with a choice of far-reaching import. It has been asserted that the alternatives are an association of nations, on the one hand, and a confederacy of nations on the other. It has been urged that the idea of friendly and more or less informal association was exemplified in the Pan-American conferences and the peace conferences at The Hague, while confederacy finds expression in the League of Nations. I would like to submit, in the first place, that these alternatives are by no means so sharply defined and mutually exclusive as seems to have been assumed, and in the second place, that in so far as they are mutually exclusive, there should be no real doubt about the choice which the United States is required to make.

The alternatives are neither well defined nor mutually exclusive. Consider the idea of association among nations as exemplified in the Hague peace conferences. Such conferences are interesting and important phenomena, but they are only a part of the picture. Indeed, we have achieved much more in the way of world organization than any study of such conferences can possibly disclose. The Hague conferences, for example, made no contribution whatever to international administration and were in no definite way associated with its development. And yet the growth of administrative unions was undoubtedly one of the most significant developments of the past half century. It is noteworthy that the United States took an active and influential part. Again, by way of providing for the peaceful settlement of international disputes, the Hague conferences created the so-called Permanent Court of Arbitration. In the recent recrudescence of pessimism, this institution has come to be regarded in



some quarters as a unique expression in world organization of the association idea. It seems to have been forgotten that in the conferences which formulated the plan the principal merit claimed for it was the superiority of something over nothing. Has it also been forgotten that the best effort of the Second Hague Conference was spent upon an attempt to formulate a plan for a real international court of justice and that this effort was initiated and supported vigorously by the government of the United States? It is well known that the effort failed because of inability to reach an agreement upon the court's composition. It may be confidently asserted, nevertheless, that in preparing the way for future agreement this abortive attempt was really the Second Conference's most substantial achievement. Finally, the Hague conferences afforded an opportunity for the friendly discussion and adjustment of political questions. It is urged that we should revive the conferences and perpetuate them. This is a proposition entitled to consideration on its merits. In the meantime, however, it should be remembered that more was actually done for the maintenance of peace in the past century by another type of conference in which participation was more limited, procedure less formal, and achievement more relevant to the world's immediate need. What survey of progress made in the development of world organization during the past century can neglect the much maligned concert of the great powers, in which the United States before the World War had begun to take an active interest, with which it had on occasion consented to coöperate, and which it has recently summoned to our own capital to consider certain of the more pressing international problems of the present day. Let us complete the picture. Let us regard all that the nations have achieved through generations of struggle as a somewhat coherent though primitive organization. We see a remarkable accumulation of administrative institutions which has evolved more or less spontaneously to meet international needs. We see fruitful experiments with arbitration, arbitration dignified in the Hague Tribunal, and the foundations laid for an international court of justice. We see international conferences innumerable, including those which have been broadly represen-

tative, and which have debated much but settled little, and also those which have wielded power, though sometimes, it has seemed, without much regard for justice. If we were to frame a constitution for this complex organism, expressing accurately its true significance, it is evident that the constitution would have to provide for something much more substantial and complete than intermittent and friendly association.

If those who urge the idea of association as opposed to confederacy really mean that we should revert to Hague arbitrations, Hague conferences, and the like, instead of going ahead to build more boldly upon existing foundations, there should be no uncertainty about the decision. The time has surely come when it will be advantageous at least to coördinate the sprawling growth of international administrative institutions under more systematic and centralized supervision. Nor is there any reason of expediency or principle why this should not be done. The time has come also when the nations require an institution more convenient, more permanent, more of the nature of a court than the very imperfect contrivance devised at The Hague and known as the Permanent Court of Arbitration. This so-called Permanent Court is not permanent. It is not a court. It provides only a transitory forum which is too unwieldy and expensive for the less important cases. It has no continuity, no history, no record of past performance, and is too inconstant for many of the more important cases. Leaving out of calculation the years of war, the so-called Permanent Court of Arbitration has decided an average of less than one case a year. A few of its awards, as in the Pious Fund or the Savarkar case, would have been creditable to a court of justice. Others have presented the characteristics of arbitration, notably the North Atlantic Fisheries award, giving Great Britain two big fishes and the United States five little ones, and the Casablanca award, deciding that whereas conflict results from the collision of two incompatible forces the German consular authorities in Morocco could not be blamed for a grave and manifest error. Let the system of arbitration be retained for the settlement of controversies in which arbitration is appropriate. But let us have also a court before which may be made a very

humble and a very modest beginning in developing the processes of international justice. Finally, has not the time arrived when the United States ought to be more candid about its intention of coöperating, not only in regional conferences like the Pan-American, and general conferences like those held at The Hague, but also in conferences like the one held recently at Washington in which the great powers concert together. It is certain that the United States will participate in many assemblies and councils of both types. Experience has demonstrated that each has a useful function to perform as a peace-promoting agency in international affairs. Then why not be candid, in the interest of simplification and certainty, and enter into an agreement with other nations for the summoning periodically of conferences of either sort linked together by the useful fiction of continuity. Why not take the system of international conferences which has grown up in the past and make it more efficacious by giving it a plan. If this is the difference between association and confederacy, then why not accept confederacy.

There are practical disadvantages, it must be admitted, in any program which aims to create a more formal association or confederacy among nations. A program always excites quiescent issues. Difficulties which time is competent to remove in an evolutionary process become acute and sometimes insurmountable. Attrition is easier than the grand strategy.

As soon as it is proposed that nations organize their association more systematically, serious difficulty is encountered in determining the measure of each nation's participation. How shall we apportion representation in council, court, or conference? How shall we distribute votes if there is to be voting, or expense if there is to be a budget? There are great powers and small powers, strong powers and weak powers, powers which are advanced in the civilization which is characteristic of the twentieth century and others which are backward. The great powers will not submit really important decisions to a tribunal or conference which may be dominated by the small, weak, or backward states. The lesser states know all too well the dangers which inhere in the predominance of the great. Upon what basis is it possible to

constitute an organization including sixty or more nations so as to satisfy the powerful, safeguard the weak, assure adequate representation to every factor, and yet attain an organization which is wieldy enough to serve some useful purpose in providing security for peace?

The difficulty becomes more evident as we consider the extraordinary group of empires, nations, states, and quasi-states with which we have to deal. There are between sixty and seventy political entities in the world today (not including Andorra, Lichtenstein, Monaco, and San Marino) which may fairly claim some consideration in any program of world organization. These entities divide the earth among themselves with little regard for the cartographer's convenience. One is a mere pin point of color. Another covers a great portion of the map with red or brown or blue. Ten have a territorial area of upwards of a million square miles, while twenty-eight reckon area in six figures and twenty-nine reckon it in five figures. If territorial area were to be accepted as a standard by which to measure the right to participate in world organization, Japan might rank as low as twenty-third or twenty-fourth, being outranked by such countries as Abyssinia, Colombia, Persia, Peru, and Venezuela. Diversities of population are quite as extraordinary as diversities of area. The British Empire as a whole claims over 440 million. China claims 400 million and probably has at least 325 million. India claims more than 300 million. Including India as a separate entity, there are five countries which have a population well over 100 million, while figures for the French empire fall but little short of that number. On the other hand, seventeen countries, not including the French colonial empire, compute population in eight figures, twenty-eight compute it in seven figures, and ten compute it in only six figures. Estimates of area and population suggest only the more striking differences. There are maritime states and inland states, states which are dependent upon overseas commerce and others which are nearly self-sufficient. There are sea powers, land powers, and states of no military power at all. There are states or quasi-states united loosely in imperial union, and others which admit no ties except those of

the great community. There are states which live in the penumbra of another's hegemony, and quasi-states under guarantee, protection, or mandate. There are states—but why elucidate the obvious? The problem of formulating a satisfactory scheme of participation in world organization is one of unusual difficulty.

Experience indicates, nevertheless, that the problem may be solved. There are several factors of which account will have to be taken. Perhaps the most important of these factors is the distribution of the world's population. Prepossessed by tradition, we have been inclined hitherto to make too much of the state, the Great Leviathan, and not enough of humanity. We have been unmindful at times of the principle that organization and law are justified only as they promote the welfare of the human beings whom they are intended to serve. International organization and law must be justified by the same test. This means that organization must in some degree represent and be responsive to human beings who inhabit the earth. The practicability, the necessity indeed, of taking this factor into account has been indicated in the spontaneous development of international conferences. While we have had regional conferences and general conferences in which many states participated equally, really contentious issues have usually been referred to smaller conferences in which the great powers were dominant. It is noteworthy that the great powers today are included among the nine countries which rank highest in population and that the other countries included are China, India, Russia, and Germany. Population is an important factor, but not the only one of which account must be taken. A numerous people with an imperfectly developed economic or political organization cannot hope to exercise as much influence in world affairs as a less numerous but more coherent people. Economic or political upheavals may temporarily eclipse international power. It is apparent that we must also give attention to what may be described, for want of a better term, as qualitative criteria.

From brief suggestion of a feasible approach to principle, let us turn to consider the principle's application in a plan. When the time comes to draft a plan of organization, can we possibly

do better than to make two series of conferences an outstanding feature of the proposed organization? We may provide for periodic conferences in which all nations participate equally and also for conferences in which the nations greatest in population and influence shall have a majority of the representation. We may provide that these two series of conferences shall function concurrently. The idea is an old one which has been urged many times by illustrious advocates. It has been approved in the recent treaties and embodied in the League of Nations. More recently, the existence of such a twofold representation in the league has made it possible, for the first time, to secure an agreement among great states and small states on a plan for a permanent international court of justice. As the brief history of the Council and Assembly of the League has already demonstrated, the bi-conference plan does not resolve all difficulties. But it does provide a reasonable basis for compromise. It has a real foundation in the experience of history. And by making it possible to organize the processes of peace it prepares the way for more useful developments in the future.

Another difficulty results from the desire to invest world organization with power. It is said that international law must have sanctions, that we must have an organization "with teeth." This is an aspect of the question about which reasonable men may disagree. It is my own opinion that we are in danger of confusing a vague ideal with the immediate opportunity. There is no conceivable kind of world organization, with or without power, which can certainly maintain peace. The German confederation did not maintain peace among its members; neither did the federal constitution of the United States; neither has British imperial union. Who can view realistically this distrustful and distracted world and hope that world organization may accomplish more? Is there not grave danger, indeed, that world organization incorporating the sanctions of affirmative covenants, joint force, or the boycott may cause more irritation than it allays and may actually be provocative of war. This is the most serious defect in the plan of the Paris treaties. Not content with negative covenants and moral sanctions, the framers sought to include

affirmative covenants and physical sanctions. And to cap the climax of that scheme's iniquities, they compromised the whole plan by linking it up with an impossible settlement, actually giving the league more power to enforce the settlement than it has to preserve peace. Disentangled from the European treaties of peace, its covenants construed as self-denying and its guaranties as voluntary, the League of Nations presents an altogether admirable scheme of organization. It is a great misfortune that the United States has not found a way, safeguarded by adequate reservations, to participate in its councils and in the new court of justice which it has just created. We cannot hope to maintain peace either with or without affirmative covenants and physical sanctions, until the slow processes of evolution through education have taught us to think and act differently in international relationships. The immediate opportunity is a more modest one. By organization we may conserve what has already been achieved. The importance of this is not always appreciated. We may also equip ourselves much more effectively to meet current international needs. And, above all, we may direct and hasten the processes of evolution by strengthening and improving the foundations upon which the superstructure of peace must eventually repose.

It has been my purpose to suggest that world organization ought to be grounded solidly upon the foundations laid in past experience, that this has been satisfactorily achieved in the structure of the existing league, but that world organization for the present should be without affirmative covenants or sanction of physical force. Such a program is conservative. Is it worth effort and sacrifice? It seems to me that it is not only worth effort and sacrifice, but that it offers what is perhaps the greatest opportunity for constructive achievement in international affairs since the time of Grotius.

Consider the effect of such an organization upon the development of international law. It will be agreed, no doubt, that a conspicuous imperfection in international law has been its unreality—the impractical and unsubstantial character of many of its rules. This has been due largely to the circumstance that of

all formulating agencies the juristic writings have been easily the most influential. There has been nothing in international law that is really comparable to the influence of judicial decisions, administration, and legislation upon the growth of municipal law. Modern developments in international organization have begun to exert faintly an influence which is somewhat comparable. Is it too much to hope that a program of world organization may accelerate and strengthen this tendency and so make it possible eventually to redeem the law of nations from its unreality.

It will be agreed also that another characteristic defect in international law is its confusion at many points with the uncertainties and intrigues of diplomacy. How much depends, for illustration, upon the anomalous rule in regard to recognition. By withholding recognition a new community may be deprived, with disastrous effect, of the status to which it ought to be entitled, or an old state may be partially outlawed by refusing to recognize a change in government. And the decision or decisions in each instance may be made in secret in the foreign offices of the more influential powers. This, from the legal point of view, is an abominable situation. With the nations organized, there need be no justification for its continuance. In this and other respects it may be possible through organization to develop clearer delimitations between the province of international law and the domain of the diplomat. Finally, who would deny that the gravest of all deficiencies in a very imperfect system has been the meager development of peaceful remedial processes and the remarkable emphasis placed upon war. World organization should change the emphasis. Instead of peace conferences devoted to the laws of war, we may hope for peace conferences concerned with the laws and problems of peace. The way will be prepared for the development of the most undeveloped and most important part of the international system.

World organization promises no millennium, but it does promise new and greater opportunities for progress in the maintenance of peace. By the fundamental traditions of its foreign policy and by every consideration of self-interest, the United States is required to take a helpful and an influential part.



## MINISTERIAL RESPONSIBILITY VERSUS THE SEPARATION OF POWERS

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Formerly political scientists were inclined to criticize the American theory and practice of the separation of powers in the federal and state governments and to commend instead the cabinet or parliamentary form of organization. Thus Walter Bagehot, Sir Henry Maine, Woodrow Wilson, Frank J. Goodnow, along with many others, pointed to the advantages of cabinet or parliamentary government over presidential government as developed in the United States. A consensus of opinion was expressed by Wilson who said, "As at present constituted, the federal government lacks strength because its powers are divided, lacks promptness because its authorities are multiplied, lacks wieldiness because its processes are roundabout, lacks efficiency because its responsibility is indistinct and its action is without competent direction."<sup>1</sup> At one time the American plan of separation of powers was compared unfavorably with the French system in which governmental powers were divided into two branches—a policy-forming branch or "Politics" and a policy executing branch or "Administration."<sup>2</sup> On another occasion the tripartite system of the separation of powers was charged with responsibility for much of the political corruption prevalent in American politics.<sup>3</sup> The same theory of separation has often been condemned as requiring too many checks and balances and as involving a do-nothing policy for legislative and executive officers.<sup>4</sup> It has been not uncommon for practical statesmen, for teachers of government and others inter-

<sup>1</sup> Wilson, *Congressional Government*, p. 318.

<sup>2</sup> Goodnow, *Politics and Administration*.

<sup>3</sup> Ford, *Cost of the National Government*, ch. vi.

<sup>4</sup> Howe, "The Constitution and Public Opinion," in *Proceedings of the Academy of Political Science* (October, 1914), p. 7.

ested in public affairs to recommend the adoption of a modified form of cabinet government for federal and state governments in the United States.

Although the lack of direct connection between the legislative and executive departments of the federal government has resulted in such obvious weaknesses and incongruities that many public men have urged important modifications of the present arrangements, and although the same conditions were, in part, responsible for the impotence of the federal government to deal effectively with the problems of peace and reconstruction, political developments of recent years have tempered somewhat the opposition to the American plan of separation of powers and have dulled the enthusiasm of the advocates of cabinet government. For example, it was freely predicted in England that even before the war, cabinet government was breaking down, and that something of a radical reorganization was necessary. The cabinet, said Lord Lansdowne, "became an unwieldy body. . . . If only a few of them took part, the cabinet ceased to be representative. If many of them took part, the proceedings tended to become prolix and interminable, and it is a matter of common knowledge that reasons of that kind led to the practice of transacting a good deal of the more important work of the government through the agency of an informal Cabinet."<sup>5</sup> It is a matter of common observation that the weaknesses of cabinet government revealed before the war were greatly augmented and resulted in an almost complete breakdown of the cabinet system during the war. The gradual evolution of the inner cabinet and the construction of an imperial cabinet left comparatively little of the former system in effect in the last years of the conflict. In the light of this experience Englishmen have seriously considered whether, with the former cabinet system restored, it would not be advisable to provide that in time of war cabinet government should give way to a dictatorship modelled somewhat after the presidential office in the United States.<sup>6</sup> In other respects Englishmen have been

<sup>5</sup> Marriott, "The Machinery of Government," in 88 *Nineteenth Century*, 1086.

<sup>6</sup> Dicey, "A Comparison between Cabinet and Presidential Government," in 85 *Nineteenth Century*, 85.

considering some transformations of cabinet government which would bring their governmental machinery nearer to the form prevailing in America.<sup>7</sup>

Cabinet government, it is well known, has not worked satisfactorily in France, and some French writers have been uncompromising critics of the system. But these criticisms savored of an academic flavor until the trials of war and reconstruction emphasized anew the defects of this form of organization. From these experiences as well as from the trend of politics prior to 1914, Frenchmen have come to favor two proposals which would inaugurate in France a separation of powers modelled in certain essential respects after the American plan. The first of these proposals, expressed in the language of President Millerand, is that the nation's will "manifested by the voice of its representatives, needs, in order to be accomplished and respected, a free executive power under the control of Parliament."<sup>8</sup> It is the express intention of the newly elected president to participate of his own initiative in the foreign affairs of the nation and to exercise in other respects a "free executive power," a policy which, if carried out to any considerable extent, will have a tendency to change the government of France in the direction of presidential government. The other proposal, also referred to in the address of President Millerand, is the establishment of an independent judiciary with the power to review legislation along lines similar to the practice of American courts. Those supporting this proposal are in control of the French government, and it is thought to be only a matter of time until either by amendment to the constitution or by judicial interpretation based on the former declarations of rights French courts will be exercising the power of judicial review of legislation.<sup>9</sup> With a free executive power

<sup>7</sup> Cf. *Report of the Machinery of Government Committee*, Lord Haldane chairman (1918).

<sup>8</sup> President Millerand announced in this connection that he intended to select premiers who would carry out his policies, and thus far he has managed to retain the dominant position.

<sup>9</sup> See Lambert, *Le Gouvernement par les Juges et la Lutte contre la Législation Sociale aux États-Unis—L'expérience Américaine du Contrôle Judiciaire de la Constitutionnalité des Lois*, (Paris, 1921).

and an independent judiciary each modelled largely after the American system, the French government will no longer have real parliamentary government.

The French system was formerly praised in America as involving a combination of the legislative and executive departments in the formulation of governmental policies and the establishment of a system of legislative supremacy.<sup>10</sup> Administration, or the carrying out of the governmental policies, was in this system exercised by administrative officers with the aid of the judicial department which was regarded as a branch of the administration. More recently a French authority<sup>11</sup> has called attention to the fact that leading Frenchmen look with admiration upon the American system with its tripartite division of powers, legislative, executive and judicial, along with the principle that judges shall pass on the constitutionality of legislative acts which establishes a doctrine of judicial supremacy or government by judges.

The political thinkers in any country are likely to be conscious of the defects of their peculiar institutions and to view with admiration the practices of foreign governments with which they are on the whole less familiar. It seems that a superficial examination of the French system of government by Americans frequently leads to an admiration of that system and the conclusion that it is superior to our own. So the leaders of French political thought with but a slight knowledge of the practices of American institutions are disposed to advise their fellow countrymen to adopt the American theory of the separation of powers. The observation that Frenchmen are seeking to adopt certain features of the American plan of separation of powers; that Englishmen would like to provide an arrangement similar to the American presidential system to meet the extraordinary conditions of war; and that many Americans look to England and France for guidance to remedy the defects of their plan of separation of powers seems to point to the fact that our theories and traditional conceptions on this subject need to be revised.

<sup>10</sup> Goodnow, *Politics and Administration*.

<sup>11</sup> Lambert, *op. cit.*

The principle of the separation of powers in practice has resulted in three points of view and methods of interpretation which have led to quite different results. These are: the French theory, the English theory and the American theory.

Although the government of France was affected by the eighteenth century theories of the separation of powers and particularly by the proposal of Montesquieu relating to the separation of powers, the interpretation of these eighteenth century theories led in France to the proposition that courts ought not to interfere in the exercise of legislative powers and are not privileged to suspend the execution of the laws. The French have, therefore, denied to the courts the right and duty of passing on the validity of legislative acts, claiming that this would be an interference with the independence of the other departments. Under the present constitution France has continued this interpretation and has adopted parliamentary government, with the result that France is governed under what is known as legislative supremacy. But owing to the fact that the French system of government is based on the Roman civil law, and that Frenchmen are accustomed to methods and practices whereby executive and administrative officers perform a much larger part in the making and enforcing of law than is customary in Anglo-American countries, the legislature is much more limited in its scope of action and the administration consequently enlarged in its functions. In fact, in all countries which have adopted as a basis for government the Roman civil law, executive and administrative officers participate to a much larger extent in the forming of government policies (with almost complete initiative in the framing of laws and in determining the details of administration), than is customary either in England or the United States. Although the legislature, then, along with the principles of parliamentary government, is supreme in France, its supremacy applies to a more restricted field than in Anglo-American countries.

In England there has never been a clear and well-marked division of powers such as was suggested by Montesquieu. Since the development of parliamentary government and the assurance of legislative supremacy with the dominance of the House of

Commons, legislation and execution have been combined to such an extent that no strict separation between these functions is practiced in the English government. The courts, although in final analysis subordinated to the functions of making and applying the law, have in England, under what is known as the rule of law, a semi-independent status. They are privileged unless specifically denied this power by acts of Parliament, to restrict, limit and under certain circumstances to set aside the acts of executive officers.<sup>12</sup> Thus, although the courts are not privileged to declare legislative acts invalid, they may, by the process of interpretation, have a controlling effect on the application of various branches of law in England. This exception does not seriously affect the general principle that England is ruled under legislative supremacy with the combination of legislative and executive power vested in the cabinet and prime minister. The English system of government is a government by a few—an executive committee—under an arrangement of direct responsibility with the lines of control generally visible and open to the constant pressure of public opinion.

The theory of the separation of powers which was evolved in the United States assumes three well-defined and more or less independent organs of government. Each of these organs is regarded as within its sphere to be beyond the control of the other organs. Each is assumed to have certain discretionary rights, privileges and prerogatives. Since the powers and duties of the legislature and executive are usually more clearly defined, and since it is the duty of the courts, as developed in American practice, to define the limits of these authorities, the judiciary becomes the guardian of the liberties and privileges of the citizens when the executive or legislature exceeds the powers outlined in the fundamental law. The American principle of the separation of powers has prevented the combination of the legislative and executive departments which is characteristic of most European governments.

<sup>12</sup> Review of *The Case of Requisition*, Scott and Hildesley, 21 *Colorado Law Review*, 833.

A marked difference between the American and the English-French systems arises from the fact that under cabinet government the prime minister and the other members of his cabinet may be members of the legislature; whether members or not they have the privilege of participating in the activities of the legislative body. In fact the ministers are expected to prepare legislation affecting their departments, to present the measures to the legislative body, and to defend them when under consideration. The peculiar theory adopted in the United States has prevented this arrangement, with the result that with the exception of the reading of the annual message to Congress by the President, the President and his cabinet officers cannot visit and participate in the proceedings of Congress and can only deal with the legislative body in an indirect way by appearing before committees, by sending communications or by trying to influence Congress through the press or by patronage and other roundabout methods. A similar practice prevails in the state governments. In the American system the lack of unity in action and execution renders the processes of government invisible and makes the lines of responsibility indirect and covert.

It is worthy of note that the familiar independent-unit close-compartment plan of separation was not incorporated in early state constitutions, where the legislature was given a dominant position with the executive and the courts subordinate. Neither was the theory followed in the general plan of the national government which intermingles the powers at many points. The failure to incorporate a definite theory of separation in the Constitution left the way open, President Washington thought, to consult the Senate freely as an executive council. The President also felt at liberty to secure the advice of the judges in advance of the formulation of government policies. Rebuffed in both efforts owing to a curious notion of privileges and prerogatives of legislators and judges, Washington was obliged to accept a view of separation of powers quite different from what he conceived the Constitution to establish. Similarly the first state constitutions neither made definite provision for an independent judiciary nor included any obstacles to free consultation of executive officials

with legislative departments. It was not then the laws and constitutions of the eighteenth century which formally established a tripartite system which renders coöperation extremely difficult, but the peculiar concepts of independence held particularly by those in legislative and judicial positions. This observation has a pertinent relation to the proposals for reform to which reference will be made later. For the purposes of this discussion the English and French theories may appropriately be considered together since both involve the essential features of cabinet government as contrasted with the presidential system of the United States.

The English-French system of cabinet government with the unity of governmental powers has been adopted extensively in Europe and elsewhere. It is now in operation in the self-governing colonies of Canada, Australia, and South Africa, and in Belgium, Italy, France, Netherlands, Spain, Norway, Chili, and has been partially applied in Denmark and Sweden. It has recently been incorporated in a modified form in the newer constitutions of Europe, such as those of Germany, Czechoslovakia, Poland and Jugoslavia. The presidential system, as it prevails in the United States, was accepted by countries like Japan and Germany before the war, and is commonly applied in Latin-American countries. Executives in these countries are given greater authority than is allotted in the countries with cabinet government. So far as information is available, with the exception of Chili and, to a limited extent, Peru, the Latin-American countries give the President as executive an independent position. In Venezuela, for example, where the constitution obviously attempts to establish parliamentary responsibility, this provision has in practice been ignored.

Intermediate between cabinet and presidential government is the Swiss system, which places the executive authority in an executive board selected by the Federal Assembly and required to work through and with the assembly but selected for a given term and not subject to removal by a vote of lack of confidence. Members of the federal council are usually members of one of the chambers and the relations between the councillors and the legislature are very intimate. As in other European countries



the councillors as ministers take the initiative in preparing measures for consideration by the houses. The plan of the Uruguayan constitution<sup>13</sup> also creates an independent and responsible President with powers similar to those of an American President, particularly in relation to foreign affairs, police, etc., but it establishes a National Council of Administration composed of nine elected members who have control over branches of the administration not granted to the President, such as public instruction, public works, labor, industries and agriculture, charity and sanitation. The council prepares the budget, supervises elections and renders an account of all its activities to the legislative assembly. Councillors and members of the ministry may participate in the sessions of the assembly but may not vote. Ministers are held responsible for their own acts. The President and ministry are given the right to present bills to the chamber or to offer amendments to bills under consideration.

The new Peruvian constitution<sup>14</sup> likewise sets up an independent executive on the American plan but requires that the acts of the President be signed by a minister to give them effect. With the approval of the President ministers may present to Congress proposals for laws which they deem desirable. They may take part in the debates but may not vote. In a certain measure ministers are jointly responsible for general acts and individually for the acts connected with their departments. Ministers may be forced to resign by vote of lack of confidence in either house of Congress.

The question of the separation of governmental powers and their distribution among the various branches of government remains, then, as one of the foremost issues of modern politics. A number of countries are in the process of adopting some form of cabinet government, whereas others are inclined in part, at least, to introduce certain features of the American presidential system. Each system appears to have certain advantages which appeal to the proponents of the other system. It will be well, therefore, to

<sup>13</sup> Cf. 1 *Southwestern Political Science Quarterly*, 95.

<sup>14</sup> *Ibid.*, II, p. 106.

consider some of the issues which have arisen in connection with the distribution of powers and to discuss briefly their effect on the organization and administration of modern governments.

Among these issues are the growth of executive powers and discretion, the decline of legislative authority in relation to the making and adoption of the budget, the necessity of government by permanent, professional officers with the consequent effect upon the making and execution of the laws, and the distrust and dissatisfaction with present legislative bodies. A brief consideration of each of these will render somewhat more specific a consideration of the present situation in relation to ministerial responsibility and the separation of governmental powers.

One of the striking facts with regard to the development of modern governments is the extent to which executive powers have been increased, and executive discretion in the administering of law has been enlarged. This process has been carried to its greatest extreme, of course, in connection with the war powers, under which government by law and by rule became in large part government by the wish and discretion of administrative officers and military leaders.<sup>15</sup> But it is not only in time of war that this tendency has become apparent, for the modern tendency to place authority in the hands of the heads of departments with power to issue rules and ordinances, and to create various boards and commissions chiefly executive in character, but with powers that are legislative, executive and judicial in scope, all tend to emphasize this fact, namely, that modern governments are going in the direction of greatly enlarged executive powers.<sup>16</sup>

A keen observer of the tendencies in modern governments has recently pointed out that so far as the American governments are concerned, we have passed through three periods: first, one in which there was a tendency to place great responsibility and authority in the hands of legislative bodies; second, when the legislative bodies declined in power and esteem and many limita-

<sup>15</sup> See Willoughby and Rogers, *An Introduction to the Problem of Government*, pp. 95ff., for a brief summary of the modifications of the rule of law in England during the World War.

<sup>16</sup> Cf. Fairlie, "Administrative Legislation," in 18 *Michigan Law Review*, 181.

tions were placed upon the exercise of powers, the judiciary, as the protector of constitutions and the guardian of these limitations, was given extraordinary powers and duties; third, when legislative supremacy and judicial supremacy have declined and instead we find ourselves in the process of elevating to an extraordinary place the executive departments of the government. No doubt the process of shifting from one department to another will vary according to the peculiar times and conditions through which a nation passes, yet the fact remains that the theory of the separation of powers in its former sense of real separation and independence appears to be applicable only to a primitive and undeveloped society. The modern complex and greatly expanded functions of government require an enormous extension of the executive functions and a consequent limitation by comparison of the functions of the other two departments.

The passing upon the budget which involves the voting of taxes, and the appropriation of public money was once regarded as the very essence of the power of legislative assemblies and the fundamental basis of representative government. To Edmund Burke, liberty from a governmental standpoint inhered in a large part in the control of the purse strings. But the situation has changed, and the observation of Burke appears no longer to be applicable. The voting of appropriations and the levying of taxes by legislative bodies alone have resulted in what is commonly known as "pork barrel" methods, log rolling, and governmental extravagance on a scale heretofore unknown. The recognition of this weakness in legislative-made budgets has in many countries resulted in the turning over of this function to the executive and the placing of the responsibility for the making of the budget upon the ministry: the chief function of the legislature becomes the turning of the light of publicity upon the ministerial conduct. And even the function of publicity is being taken over by the press and other agencies. This practice has been carried to its farthest extent in England, where the cabinet makes the budget and where the House of Commons has in practice given up its function of making any changes in the budget as prepared by the ministry. The tendency has been to weaken

the authority of the legislature in this field and to strengthen the position of the executive wherever an attempt has been made to increase governmental efficiency and to reduce the extravagance of legislative bodies in which individual members are dominated by private and local interests and log-rolling methods inevitably prevail.

The extraordinary enlargement of governmental functions and the increasing complexities of the problems involved in public administration have rendered it necessary to modify seriously many of the principles and practices applicable to primitive agricultural and undeveloped societies. The complexity of governmental operations and the many technical and intricate issues concerned, have made it indispensable to secure for the operation of government a large number of specialists or professional officers. The advice and assistance of such experts, it is thought, can be secured to the best advantage when the processes of legislation and administration are combined. In practically every other government except that of the United States, either the ministers or officers connected with the government have control of the preparation of bills and their presentation to the legislative bodies. Executive initiative in this process tends to place the matter under the control of professionals who develop standards and a technic of legislation with which the American legislative product compares quite unfavorably. In England and in France there has been developed a permanent and professional class of administrators who by training and experience are qualified to deal with the increasing complexities of administration. Though the methods of securing these permanent professional administrators differ, the general result upon the conduct of public affairs is quite similar. It has been found extremely difficult to secure and make use of permanent and professional officials under a system of strict separation of powers and the independent authority of the departments concerned.

The distrust and dissatisfaction with present legislative bodies is one of the noteworthy characteristics of modern political thinking. Representative government, which was once looked to as the panacea for good government and as an indispensable

requisite of the development of democracy, is now on trial. There is a profound dissatisfaction with the functions of representative bodies in countries like England and France which have the parliamentary or cabinet systems, and there is the same and perhaps more serious dissatisfaction with legislative bodies in presidential countries such as the United States.<sup>17</sup> It is claimed that our representative bodies are not really representative; that certain classes only, chiefly the classes of money and property and professional interests, are represented in legislative bodies, and that the great mass of workers and other large classes are not. This objection to representative bodies is leading to a movement to create assemblies based upon industries and professions which would be given authority to deal with many of the questions relative to work, hours of labor, sanitary conditions, prices, wages and matters of this kind which are not dealt with satisfactorily by the present politically representative bodies. There seems also to be a general agreement that representative bodies are either inefficient, wasteful or corrupt, and in some instances the charge is made that all three of these weaknesses are apparent in our present legislative bodies.

These problems have brought about a reëxamination of the general organization and functions of government whether presidential or cabinet in form. Numerous reports and investigations have been made, such as the Haldane Report in Great Britain, and reports by committees on the reorganization of administration in the United States, in which the present organization of the cabinet and administrative functions and duties are criticized with suggestions for reform. A few conclusions seem to follow from the reëxamination which is under way. First, it is taken for granted that whether the government be parliamentary or presidential, there will necessarily be a government by a few, either by a president and a cabinet or by a prime minister and a cabinet. It is also conceded that an elective body can serve effectively only as a board of advisers and critics, and that for this purpose the large assemblies which we now have are cumbrous and un-

<sup>17</sup> See Laski, *Foundations of Sovereignty*, pp. 34ff.

wieldly; that a relatively small body elected for long terms on some plan of proportional representation to which would be selected those who are familiar with local conditions as well as with some of the essential principles and practices of government administration seems a requirement, if government is to keep pace with the growth of its functions and the increasing complexity of the conditions with which it must deal. It is also realized that governments are acquiring new and more complex functions and that a large part of the time of those connected with the government must now be given to the collection of information, in the form of investigation and research, in order that legislative and administrative officers may deal intelligently with the very difficult problems that arise.

To meet this situation, the Haldane Report included among the suggested executive departments one on research and information. Perhaps an even better arrangement would be to have research divisions and bureaus connected with all the departments and in proportion to the need of technical assistance and information. In the light of these principles the American theory of the separation of powers appears largely as a device for a policy of inaction—an excellent plan to encourage politicians to escape responsibility and to permit private individuals and corporate organizations to defy public powers with impunity. In the words of a caustic foreign critic, if the desire is to secure an effective check on radical and progressive movements, if the intention is to place corporate organizations in an impregnable position so far as government regulation is concerned, the American theory of the separation of powers is undoubtedly a well-conceived device for this purpose.<sup>18</sup> From the standpoint of responsible and efficient government, the separation of powers stands as an obstacle which must be removed if the government of the United States is to make progress along governmental lines and is to be prepared to meet conditions both domestic and foreign.

A large part of this difficulty could be overcome if the President and his cabinet were made directly responsible for the formulation of legislation as respects the administration, and the cabinet

<sup>18</sup> See Lambert, *op. cit.*, 224.

members were free at any time to appear and debate in the houses. It seems necessary, therefore, that an extreme and indefensible separation of powers in the United States, which was largely the result of interpretation, be abandoned in order to make our government more responsible and more efficient. This could be done by a mere general agreement, just as the existing theory is largely based upon the peculiar conception of officers, who were responsible originally for the interpretation and application of our constitutions. Modifications could be made through the simple process of interpretation by which they were engrafted upon early American institutions. The almost universal tendency of European nations to unite to a considerable degree the legislative and executive functions should lead us ultimately to the conclusion that our present system, a disjointed and indirect system of legislative and executive relations, should be revised.

While defects in our present system of separation of powers and lack of ministerial responsibility are apparent, it is significant that we have in our government certain advantages, such as the ready and easy concentration of power in time of war, which the leaders of thought in foreign governments would like to adopt. And the American government need not abandon the essential principles of its separation of powers. Rather should it modify its practices and procedure so as to secure ready and open access of the President and his cabinet members to the houses of Congress, and a more definite correlation of legislation and administration. This can be done without breaking down the essential features of our existing governmental order, which despite its many defects has worked fairly well. It is evident from a comparison of the cabinet and presidential governments, that cabinet government can be improved by the application of principles now made a definite part of the presidential system, and that presidential government can be improved by taking advantage of the well-known practices which have proved so successful in the countries with a cabinet government. Each has advantages which deserve continuance and development. The combination of the features of both plans is apparent in a number of recent constitutions.

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Certain tendencies are particularly notable in recent constitutions. Three are marked enough to merit listing: (1) To create a semi-independent executive, but to require ministers to assume responsibility for all important political acts of the President either individually or collectively before the legislative chambers. (2) To give the ministers free access to the legislature to take part in debates, to present measures and, if members of the legislature, to vote. (3) To place upon ministers the duty of preparing the budget, and the responsibility of formulating laws and presenting them to the legislative bodies.

With a few exceptions the tendencies are distinctly in the direction of the adoption of the essential features of cabinet government with such modifications as will leave place for a President and premier each with certain distinct and independent functions. Which of the two, President or premier, will exercise the greater powers will depend to a considerable degree upon the political conditions of the country, the personality of those holding the offices and the particular influences at work favorable either to incabinet or presidential machinery.

But mere palliatives such as the making of the budget by the President and his cabinet, and the combination of executive and legislative powers largely in the same hands, though they may improve the working of existing governmental machinery will only tend to call attention anew to certain obvious facts, namely, that modern representative assemblies are failing in the performance of some of their most important functions, that the present bodies must be radically changed or give way to other forms of political organization, and that the contest to secure and retain representative and responsible governments will require as in past generations constant vigilance and increased interest on the part of political thinkers.

It seems necessary for the consideration of the problems of representative government and ministerial responsibility to bring under criticism certain well-known political ideas and traditions. With regard to the organization of government just as in the field of law, mere tinkering with political forms and organizations will not meet the requirements necessary to adapt political



institutions to modern conditions and tendencies. The leaders in political science will of necessity be required to devote more effort to the preparation of programs of reform and reconstruction involving entirely new procedure and practices and to the campaign for acceptance of these reforms as parts of the governing processes. Such reforms, as is the case with the plans for reorganization of courts fostered by various bar associations, will be adopted slowly. But the need in the field of political science with respect to radical reconstruction, both from the standpoint of legislation and administration, is equally as necessary as constructive reforms in the field of law. Half-way or temporary measures, such as the commission form of government in cities or the plan of administrative consolidation of bureaus, commissions and other administrative agencies in state governments, though they may be serviceable in the direction of more effective administration, do not remove the fundamental defects in modern government. Nothing short of a new type of legislative body and a very much changed form of executive and administrative organization, with a well worked out plan of correlation between the two departments, will render modern governments competent to meet the exigencies of present political, social, and economic life.

## NEW EUROPEAN CONSTITUTIONS

IN POLAND, CZECHOSLOVAKIA AND THE KINGDOM OF THE SERBS,  
CROATES AND SLOVENES

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In this period during which all political institutions are being tested as never before by the searching criticism of an awakened world and by application to the well-nigh insoluble problems left by the World War, the constitutions which have been developed by the post-war states of Europe possess a peculiar interest to the student of public affairs. They are the results of the conscious effort of the statesmen of these new commonwealths to combine with the historic institutions of their own lands those features of the public law and the political practises of the older democracies which experience has proven to be workable, to be conducive of good government, and to make possible a more or less popular control over affairs of state. The product of a season when democracy is the fashion, all of these instruments are filled with rules and phrases which have a familiar ring in American ears, despite a more than occasional Gallic or native accent. As one reads that:

"We, the Czechoslovak Nation, in order to form a more perfect union, establish justice and order in the republic, insure the tranquil development of the Czechoslovak homeland, promote the general welfare of all of the citizens of this State and secure the blessings of liberty to future generations, have adopted . . . a Constitution," it is easy to forget that the majority of the people who are to live under the institutions to be established differ as greatly from ourselves in their political background and experience as they do in language and in their picturesque national costumes. Yet the fact is that the seed of Western European

and American democracy has fallen upon new ground and may well be expected to bring forth new fruit, the development of which may be observed with profit by both the believers and the disbelievers in the universal applicability of the democratic dogma.

Of the constitutions of Poland, Czechoslovakia, and the Kingdom of the Serbs, Croates and Slovenes it should be said at once that there is much greater resemblance between the first two than between either and the last-named document.<sup>1</sup> This circumstance undoubtedly arises from the fact that in organizing their new state the South Slavs drew a large proportion of their political institutions from Serbia, its largest and most influential member, while the two northern peoples were neither able nor compelled to reproduce in their new constitutions provisions from an instrument of government under which many of them were actually living. Consequently, the system of government set up in Yugoslavia is more largely of native growth than is that of Poland or of Czechoslovakia. Indeed, the Yugoslav constitution is largely and directly based upon the Serbian instrument of 1903, while those of the two other states are of more composite origin. The example of Paris was much more influential in Warsaw and in Prague than in Belgrade; and it was more closely followed in

<sup>1</sup> An English translation of the constitution of Czechoslovakia appears in *Current History*, Vol. 12, No. 4, pp. 727-738 (July, 1920). It is not entirely accurate, and Article 11, which provides that the term for which the Chamber of Deputies is elected shall be six years, is omitted. A better translation is to be found in Hoetzel and Hoachim, *the Constitution of the Czechoslovakia Republic, With Introduction* (Prague, 1920). This pamphlet also contains a number of the constitutional laws of the new republic. An English translation of the Polish constitution appears in *Current History*, Vol. 14, No. 2, pp. 358-367 (May, 1921), and in the *Polish Bulletin*, April 15, 1921. The following corrections to this translation are noted: in Article 2, second sentence, "The legislative organs of the nation are;" the word "legislative" should be omitted. Article 35, paragraph 3, should read, "If the Sejm approves by an ordinary majority, or rejects by a majority of eleven-twentieths," etc. A French translation of the Yugoslav constitution is printed in *L'Europe Nouvelle*, IV, No. 31, pp. 987-991, and No. 32, pp. 1021-1027 (July 30 and August 6, 1921); an excellent English translation by H. W. Wolfe and Arthur I. Andrews, is now available in *Current History*, Vol. 15, No. 5, pp. 832-847 (February, 1922). In this number of *Current History* also appears an interesting article upon four new European constitutions: R. R. Buell, "The New Democracies of Europe."

Warsaw than in Prague. American institutions are most clearly reflected in those of Czechoslovakia.

The spirit and the political philosophy of Poland and Czechoslovakia, or at least of those who dominate therein, are expressed in the preambles to their constitutions, and in their constitutional provisions as to the ultimate location of political power. The attainment and preservation of independence, right, liberty, equality, justice, peace and even of self-determination, appear in the preambles among the avowed ends of the state, while in both organic laws the people are specifically named as the source of all political authority. The constitution of the Jugoslavs is not introduced by a preamble and contains no reference to popular sovereignty. In its first article it declares the State of the Serbs, Croates and Slovenes to be a "constitutional, parliamentary, and hereditary monarchy." The Polish state is formally named a republic, and Czechoslovakia is said to be a "democratic republic, at the head of which is an elected President." The Serbs, Croates and Slovenes also followed their own precedents in the organization of their legislature. The decision of the Belgrade constituent assembly to adopt the principle of the unicameral legislature and to set up a body copied from the Serbian Skupshtina placed the legislature of this country in contrast with those of the other two states, indeed, with those of practically all other nations.<sup>2</sup>

Each of these constitutions provides that there shall be a double system of courts, regular and administrative, the independence of which is assured by the usual provisions protecting the judges from executive or legislative pressure. Czechoslovakia has adopted the American principle of judicial review and has made its development by judicial construction unnecessary by writing it

<sup>2</sup> The draft constitution submitted by the government to the constituent assembly provided for a Senate one-third as large as the Chamber of Deputies and composed of members at least forty years of age. The unicameral legislature was substituted only after prolonged discussion, and by a narrow margin. It is interesting to note that in Poland also this question was one of the major subjects of debate in the constituent assembly and among the people generally. The bicameral system won by a few votes.

into her constitution in explicit terms.<sup>3</sup> The Polish constitution is equally explicit upon the subject, but with different intention. Article 81, which appears in the section upon the judiciary, declares that: "The courts have not the right to inquire into the validity of duly promulgated statutes." On the other hand, the last article of the section upon the legislature, Article 38, limits the law-making power by providing that: "No statute may be in opposition to the Constitution or violate its provisions." Thus Poland has adopted the continental theory of the separation of powers and left the legislature to place its own interpretation upon its law-making power under the constitution. This also has been done by Yugoslavia, but not explicitly.

As is usual in unitary states the legislatures of all three countries possess general instead of specifically enumerated powers. Other provisions in the legislative sections of these constitutions which are very similar to each other and to those of most modern organic laws are those setting up the rights, privileges, qualifications, disabilities and incompatibilities of members; those declaring that deputies represent the whole nation instead of merely their respective constituencies, and forbidding the imperative mandate; and those providing that members shall be chosen by universal, direct, equal and secret suffrage. Constitutional provision is made for proportional representation by all of these states. Indeed "P.R.," has been adopted by practically all of the new states of Europe, as well as most of the older ones, and may be accepted as a natural and necessary adjunct to the multi-party

<sup>3</sup> "I. Laws in conflict with the Constitution, the fundamental laws which are a part of it, and laws which may supplement or amend it are void.

"The Constitution and the fundamental laws which are a part of it may be changed or supplemented only by laws designated as constitutional laws.

"II. The Constitutional Court decides whether laws of the Czechoslovak Republic and laws of the Diet of Carpathian Russia comply with Article I.

"III. The Constitutional Court consists of seven members. The Supreme Administrative Court and the Supreme Court each designate two members. The remaining two members, together with the president of the court, are appointed by the President of the Republic." From the enabling provisions of the constitution. The ordinary courts, "in passing upon a legal question may examine the validity of an ordinance, as to law they may only inquire whether it was duly promulgated." Pt. iv, Sec. 102.

system. Poland and Czechoslovakia provide constitutionally for women's suffrage, but the constituent assembly which met at Belgrade could not agree upon this question and left it to be decided by a law. In Czechoslovakia and Poland, contested elections are decided by an electoral court, while in Yugoslavia the National Assembly itself has jurisdiction over such cases. One rather unusual provision in the Polish constitution is that which declares that a deputy may not be the responsible editor of a periodical publication.

In each of the two states which have established bicameral legislatures, the lower house is made the predominant body. The Czechoslovak and Polish senates are intended to furnish the conservative element in the government. The right to vote for senators is not acquired in Czechoslovakia until the twenty-sixth year, nor in Poland until the thirtieth. In both states the age qualification for membership in the lower house is twenty-one. The age of eligibility for membership in the Senate is forty years in Poland and forty-five in Czechoslovakia, although the President of the latter republic need be only forty, and in the former state need meet no age qualification. In Poland the terms of the lower and upper houses are of the same duration (five years), while in Czechoslovakia they are of six and eight years, respectively. The Polish constitution provides that the Senate shall be one-fourth as large as the Sejm, while the Czechoslovak National Assembly contains 150 senators as compared with 300 deputies.

To the conservative chambers, which are thus guaranteed, are assigned limited functions of review and delay in matters of legislation. A measure passed by the Czechoslovak chamber becomes a law in spite of the dissent of the Senate if the lower house by a majority of its entire membership reaffirms its original vote. If the Senate rejects by a three-fourths majority of the entire membership a bill which has passed by the Chamber of Deputies, the bill becomes a law only if again passed by the Chamber by a majority of three-fifths of the entire membership. On the other hand, the veto of the Chamber of Deputies over bills from the Senate may be exercised by a simple majority of the entire mem-

bership. The suspensive veto of the Polish Senate is even less potent, for it must be exercised within sixty days and can be overridden by a majority of eleven-twentieths of those voting in the lower house. In neither state is the government responsible to the Senate, although in Czechoslovakia the Senate as well as the Chamber of Deputies is given the right of interpellation. Both constitutions place control over the national finances in the hands of the lower house.<sup>4</sup> Neither of these senates represents political subdivisions of an importance comparable with that of the states of the American Union or the German Reich, nor will either of them be strengthened by that "sentiment of attachment to a venerable institution" which Lord Bryce believed to be one of the elements of usefulness of the British House of Lords. In fact, they are largely artificial creations, and it does not seem likely that either of them will rank high in power and influence among the second chambers of the world.

Nothing is of more vital importance in the actual operation of a modern government than the working relations between the executive and the legislative departments, and between both branches of the government and the electorate. In the constitutions under consideration, provision is made that the legislature may be dissolved by the chief executive, new elections to be held within a stated period. In Poland, however, the consent of three-fifths of the statutory members of the Senate must be obtained; in Czechoslovakia the President may not exercise this right within the last six months of his term; while in Yugoslavia the decree of dissolution must be signed by all the ministers. Only Poland has given the legislature the right to appeal to the electors against the government, doing so by providing that the Sejm may be dissolved by its own vote, passed by a majority of two-thirds of those voting. In Czechoslovakia the government, by unanimous vote, may order a popular referendum upon any government bill rejected by the National Assembly.

In each constitution annual or more frequent sessions of the legislature are provided for, and each confers upon the chief

<sup>4</sup> The Polish Senate, like the French upper chamber, shares with the President of the republic the power of dissolving the legislature. Article 26.

executive the right to call extraordinary sessions. In Poland and Czechoslovakia the President must call both houses to meet in special session within two weeks of a request to do so, in Poland by one-third of the deputies, and in Czechoslovakia by a majority of either house at any time, or by two-fifths of either house when more than four months have elapsed since the regular session. This power of minority groups to bring the national legislature into special session may well prove to have important political results. It is also possessed by the National Assembly of the German Reich.

An unusual institution established by the Czechoslovak constitution is a commission which possesses practically all of the powers of the legislature during periods when the National Assembly is not in session. This unique body is composed of sixteen deputies and eight senators, chosen in such a way as to facilitate the proportional representation of party groups. It may act in all matters which come within the legislative and administrative jurisdiction of the National Assembly save four: the election of the President or his deputy; the amendment of fundamental laws; the imposition of new and permanent burdens upon citizens or the alienation of state property; the declaration of war. Its acts have temporarily the effect of law, but they must be reported to the chambers in their first sessions after they have convened and become void if not approved within two months. This provision is an adaptation of an article in the Austrian constitution which vested similar powers in the ministry, but of course it is intended to produce precisely the opposite effect. A distinguished citizen of the new state comments upon the commission as follows: "Governmental and executive authority is thus, in principle, devoid of such power as was possessed, for example, by the government of the former Austrian Empire in virtue of the notorious Article xiv of the law relating to the representation of the empire. The Charter of the Constitution does not permit the government of our state to remain for one moment without the control, nor yet without the aid of the legislative body."<sup>6</sup>

<sup>6</sup> Hoetzel, *The Definitive Constitution of the Czechoslovak Republic*, p. 15.



Following, although tentatively and at a distance, the example of Germany, Poland and Yugoslavia have made constitutional provision for economic councils to coöperate with their national legislatures in the formulation of social and economic legislation. In Yugoslavia a single council is contemplated, its composition and competence to be determined by statute. Poland has provided for a more elaborate organization, as follows (Article 68):

"A special statute will create, in addition to territorial self-government, economic self-government, for the individual fields of economic life—namely, chambers of agriculture, commerce, industry, arts and crafts, hired labor, and others, united into a Supreme Economic Council of the Republic, the collaboration of which with state authorities, in directing economic life and in the field of legislative proposals, will be determined by statute."

Such provisions as these open the way for important and interesting experiments in the collaboration of territorial legislatures with bodies frankly representing economic interests.

Perhaps the most significant characteristic of the legislative arrangements of the three states, however, is the absence of any provision for the initiative, referendum, or recall. The only trace of direct democratic government of this sort is in the provision of the Czechoslovak constitution which permits the government to refer to the people any one of their bills which has been rejected by the National Assembly; and this is a very faint trace, indeed. In this respect these Eastern European nations stand in marked contrast with the new Germany, which, in her fundamental law, at least, has progressed much farther along this road to democracy. In fact, all three constitutions, although compromises, reflect the victories of the conservatives over the radicals just as definitely as the adoption of the Constitution of the United States registered the triumph of the Nationalists over the Separatists. This victory is most apparent in Yugoslavia, but was no less decisive in the other two states. Consider the Czechoslovak National Assembly: a Chamber of Deputies elected for six years, all of the members being chosen at one time and the selection of alternates at that time making by-elections impossible; a Senate inevitably conservative; no opportunity for popu-

lar initiative, referendum, or recall. A constitution which puts the controlling power of government into the hands of such a legislature is far from being democracy's farthest advance.

In providing for the organization of the executive branch of government, the three constitutions have, in the main, followed conventional lines. The presidents of the two republics are elected by the national assemblies, each for a term of seven years. Definite provision is made for procedure to be followed in determining whether the President has become incapacitated, in declaring the incapacity to exist and in selecting a substitute or successor.<sup>6</sup> To Americans, the advantages of constitutional definiteness in this matter should be obvious.

In both of the republics and in the kingdom, the irresponsibility of the titular chief of state is definitely provided for by the usual provisions that official acts of the chief executive shall be countersigned by the appropriate minister, or ministers, who are responsible in the political sense.<sup>7</sup> In each republic the President

<sup>6</sup> Article 42 of the Polish constitution declares that, "If the President of the Republic does not perform the duties of his office for three months, the Marshal shall without delay convoke the Sejm and submit to its decision the question whether the office of the President of the Republic is to be declared vacant. The decision to declare the office vacant is taken by a majority of three-fifths of the votes in the presence of at least one-half of the statutory number of Deputies, that is, the number prescribed by the Law of Elections." It will be observed that action under this article permanently removes the incapacitated President from office. The Czechoslovak constitution provides a different, but equally definite procedure, as follows: "If the President is incapacitated or ill for more than six months, and if the government so decides in the presence of three-quarters of its members, the National Assembly will elect an acting President, who will serve as such until the impediment is removed." Article 61. During a brief illness of the President his authority is exercised by the government, which may entrust definite functions to its own president. The Yugoslav constitution contains elaborate provisions for a regency in case of the disability or the minority of the sovereign.

<sup>7</sup> Article 54 of the Yugoslav constitution is, perhaps, the most inclusive and definite in its statement of the irresponsibility of the chief of state: "No exercise of the royal power is valid and executory unless it carries the countersignature of the proper minister. The competent minister is responsible for all of the acts of the King, oral or written, countersigned or not, likewise for all of his political actions. The minister of war and of the navy is responsible for all of the acts of the King in his position as commander in chief of the army."

In Poland, the state is guarded against either a "man on horseback," or an amateur strategist by Article 46: "The President of the Republic is at the same

and his ministers are liable to impeachment by the lower house. In Poland trial is by the Court of State; in Czechoslovakia, by the Senate. The King of the Yugoslav state cannot be impeached, but shares with the National Assembly the right to impeach the ministers, who are responsible to him as well as to the assembly. Impeachment trials are before the Tribunal of State.

More attention is given to the organization of the ministers as a governing council and to the relations between the President and the council of ministers in the Polish and Czechoslovak constitutions than is common in older organic laws. Articles 80 and 81 of the last-named instrument provide that the government shall "act as a college which is competent to take action only in the presence of the President or acting President and a majority of the ministers," and particularly specify four important fields within which the government must make its decisions corporatively. It is also set forth (Article 84) that every government ordinance shall be signed by the President of the government or the acting President, by the ministers charged with its execution, and in no case by less than half the ministers. The President of the Republic may attend and preside over the meetings of the government, and he may require of the government and its members written opinions upon any matter relating to the duties of their offices; he also is specifically authorized to invite the government or its members to consult with him. He appoints and recalls the president of the council (the Polish President possesses similar powers), a power which may make him the most important force in the state at times of national crises. Although the Poles did not include provisions of this sort in their constitution, it is evident they did not intend to allow the relationships and powers involved to develop on a conventional basis. Their constitution directs that a special statute shall determine the

time the supreme head of the armed forces of the state, but he may not exercise the chief command in time of war.

"The commander-in-chief of the armed forces of the state, in case of war, is appointed by the President of the Republic, on the motion of the council of ministers, presented by the minister of military affairs, who is responsible to the Sejm for the acts connected with the command in time of war, as well as for all affairs of military direction."

number, competence and mutual relations of the ministers, as well as the competence of the council of ministers.

Responsibility of the government to the lower chamber in Poland and in Czechoslovakia, and to the National Assembly in the Kingdom of the Serbs, Croates and Slovenes is constitutionally provided for. In the two countries first named, however, the methods by which this responsibility will be enforced are explicitly stated, while the Yugoslav constitution contains simply a declaration of the general principle, after the manner of the older European constitutions. These methods are set forth in the Czechoslovak constitution as follows:

"Art. 75. The government is responsible to the Chamber of Deputies, which may declare its lack of confidence in the government. This shall be done in the presence of the majority of the entire membership by a majority vote upon roll call.

"Art. 76. Motion to declare lack of confidence shall be signed by at least one hundred deputies and shall be referred to a committee, which shall submit its report within eight days.

"Art. 77. The government may ask the Chamber of Deputies to vote its confidence. This motion shall be acted upon without reference to a committee.

"Art. 78. If the Chamber of Deputies declares lack of confidence in the government, or if it rejects the motion of the government for a vote of confidence, the government shall hand its resignation to the President of the Republic, who will select the persons who are to carry on the affairs of state until a new government is formed."

These provisions for ascertaining formally whether the government retains the confidence of the chamber, coupled with the article previously mentioned, under which the government may carry to the people for a referendum vote any of its bills rejected by the National Assembly, may operate to relieve Czechoslovakia from the greatest drawback to the parliamentary form of government: that is, the inability of the legislature to dissent from any important government measure without destroying not only the measure, but also the government. This lack of legislative selective power has had unfortunate results in practically

every country in Europe. If in Czechoslovakia it becomes recognized that ministers need resign only upon a vote of no confidence, and not necessarily upon the defeat of one of their measures, a most important and interesting development in the responsible system of government will have been made.\*

A word more should be said about the positions of the titular heads of these states and their relations with their respective ministries, legislatures, and peoples. Briefly, in the Kingdom of the Serbs, Croates and Slovenes the old theory, copied from England, that all executive power is in the crown has been adopted, while in the other two states "the government" has been set up as a separate, distinct, almost independent part of the governmental machine, vested with constitutional powers not possessed by the President.<sup>9</sup> "The President," declares Dr. Hoetzel, speaking of Czechoslovakia, "enjoys such governmental and executive power as is expressly assigned to him by the Charter of the Constitution or by other laws of the Republic; all other governmental and executive power rests in the hands of the government. The functions of the President as set out in §64 of the Charter of the

\* In England, for instance, the danger that upon the rejection of one of its measures by the House of Commons the cabinet may resign or advise a dissolution of Parliament, has had many important results, among which three may be mentioned: first, it has been one of the most potent of the causes which have transferred the balance of power from Westminster to Downing street; second, in late years it has greatly increased the range of questions upon which the cabinet may be defeated and still retain office; third, it has made it practically impossible for any member to vote upon any first class bill upon the merits of the question itself. The Polish constitution is briefer, but equally to the point as to the manner in which ministerial responsibility is to be enforced. Article 58 provides that, "The Parliamentary responsibility of the ministers is enforced by the Sejm by an ordinary majority. The council of ministers or any individual minister will resign at the request of the Sejm."

<sup>9</sup> Nothing can make this difference clearer than the constitutional provisions themselves. Article 47 of the Yugoslav instrument declares that, "The executive power belongs to the King, who exercises it through his responsible ministers. . . ." Article 64 of the Czechoslovak constitution, after vesting eleven specific powers in the President of the Republic, ends by providing that, "All governing and executive power, in so far as the Constitution and laws of the Czechoslovak Republic adopted after November 15, 1918, do not expressly reserve it to the President of the Republic, shall be exercised by the government." The Polish constitution does not contain so explicit a statement of the independent powers of the government, but it actually does create such powers.

Constitution are very comprehensive and effective and enable the President to exercise a great influence on the direction of the affairs of the state, without at the same time burdening him with details."<sup>10</sup> The personality of the great and beloved statesman who is the first President of the Czechoslovak Republic will inevitably enhance the prestige and the power of the office in that country, and it seems not unlikely that both there and in Poland the presidency may become an office of recognized political leadership possessing more political power than is usually wielded by the titular head of a state having the parliamentary form of government. On the other hand, the powers which have been exercised by the ministries of many of the older states, largely upon a conventional basis, have been more clearly defined and definitely recognized and given constitutional sanction in these new republics.

Of the judicial systems set up by the constitutions under review, space allows opportunity to say only that in their principal characteristics they follow familiar lines. One interesting exception in detail (there are many of them) is that the Yugoslav constitution provides for military tribunals which are independent of the regular army establishment. The judges of the higher military courts are irremovable, may not be impeached without the authorization of the Court of Cassation, and may not be transferred without their own consent. Also the Court of Cassation reviews, in the last instance, the decisions of the military tribunals.

As was to be expected, each of these constitutions contains a long section upon the rights and duties of citizens. The Yugoslavs, following the German example, also included a section upon social and economic matters. In the main, these bills of rights are composed of the usual guarantees of civil liberty; but certain provisions concerning the position of labor in the state and the institution of private property are of unusual interest. Jugoslavia lays a broad foundation for state control over the relations between labor and capital in the following articles:

"Art. 23. Labor is under the protection of the state. Women and children should be the objects of special protection in work detrimental to their health.

<sup>10</sup> Hoetsel, *The Definitive Constitution of the Czechoslovak Republic*, p. 16.

"The law decrees special measures for the security and the protection of workers and regulates the hours of the working day in all enterprises.

"Art. 25. Freedom of contract in economic matters is recognized in so far as it is not in opposition to the social interest.

"Art. 26. In the interest of the general welfare and on the basis of law, the state has the right and the duty to intervene in economic relations between citizens in a spirit of justice and for the purpose of averting social conflicts.

"Art. 33. The right of workers to organize for the purpose of ameliorating the conditions of work is guaranteed.

"Art. 37. Private property is guaranteed. From property proceed obligations. The use of property ought not to injure the interests of the community. The ownership, the extent, and the limitations of private property are regulated by law."

These provisions seem to represent an attempt to vest in the government powers which will enable it to vindicate the rights and protect the interests of the community as a whole against injury by either capital or labor. Their proper use calls for disinterested fairness and statesmanlike sagacity. It will be interesting to observe how far these qualities are possessed by those who rule in Yugoslavia.

The Polish constitution in its preamble sets forth that ensuring "to labor respect, due rights, and the special protection of the state" is one of the prime purposes of the Polish nation. In Article 102 it declares that, "Labor is the main basis of the wealth of the republic, and should remain under the special protection of the state. Every citizen has the right to state protection for his labor, and in case of lack of work, illness, accident or debility, to the benefits of social insurance, which will be determined by statute." On the other hand, in Article 99 property is guaranteed "as one of the most important bases of social organization and legal order." The Czechoslovak constitution contains briefer, but essentially similar provisions. Thus these three peoples have written into their fundamental laws the foundation principles of the "capitalistic" state. Although under provisions such as have been quoted a liberal, and from the American viewpoint

a very advanced economic and social system may develop, yet by their social and economic clauses these constitutions may be identified as essential parts of the barrier which the statesmen of Versailles sought to erect against the peril from the east.

Provision for the organization of subordinate governmental units is made in greater or lesser detail by each of these constitutions. In general, the French system has been followed, with wide variations in nomenclature, organization, and in the apportionment of authority and responsibility between the representatives of the localities and those of the central government. Likewise the delicate questions arising from the presence in all three states of large minorities, of distinctly differing racial, political and religious characteristics, have been met by provisions intended to satisfy such groups while still protecting and sustaining the authority and the unity of the state as a whole.<sup>11</sup> Of these minorities the citizens of Ruthenia, or Sub-Carpathian Russia, have been accorded a unique position by the Czechoslovak constitution. Upon voluntarily uniting with its larger neighbor on the north-west, Ruthenia was guaranteed by the Treaty of St. Germain "the widest autonomy compatible with the unity of the Czechoslovak Republic." This guarantee as it is incorporated into the constitution of the latter state in the form of a paraphrase of the appropriate articles of the treaty, provides for a Diet of Carpathian Russia with wide legislative powers in local affairs; for the proportionate representation of Carpathian Russia in the Czechoslovak National Assembly; that the Governor of Carpathian Russia shall be appointed by the President of Czechoslovakia upon nomination by the government and shall be responsible both

<sup>11</sup> These guaranties define and recognize religious, linguistic and educational rights. They are most definite and complete in the Czechoslovak constitution, in which document they form a special section. Both the Polish and the Yugoslav constitutions put it within the power of the legislature to recognize, or to refuse to recognize any religion, and in Poland, "the Roman Catholic religion, being the religion of the preponderant majority of the nation, occupies in the state the chief position among enfranchised religions." The further provision that the relation of the state to the church will be determined on the basis of an agreement with the Apostolic See indicates that close relations may be expected to exist between Warsaw and the Vatican.



to him and to the Ruthenian Diet; and for other rights. Serious differences as to the fairness of these provisions and as to their interpretation and application have already arisen between the two peoples. To the outsider it would seem as though the dual responsibility of the governor were practically certain to create constant and serious friction.

The constitutions of Poland and Yugoslavia contain important provisions regarding the administration and control of the national finances. In consonance with modern practice both states have provided for the creation of the executive budget system, and have set up authorities for examining accounts which are independent of the executive, and dependent upon the lower chamber of the legislative branch of the government. The Czechoslovak constitution leaves the methods by which the financial affairs of the nation shall be controlled to be determined by law.

Although the constitution of none of these new states is regarded as having the temporary character which for years was attributed to the organic laws of the Third French Republic, yet none of them is viewed with entire satisfaction by the people concerned. Adopted by constituent assemblies hastily selected during the turmoil of war or of the early reconstruction period, containing many compromises accepted by narrow majorities, and being relatively easy of amendment,<sup>12</sup> it is not surprising that

<sup>12</sup> The methods of amendment are as follows. Poland: "Art. 125. A change in the Constitution may be voted only in the presence of at least one half of the statutory number of deputies or senators respectively, by a majority of two-thirds of the votes.

"The motion to change the Constitution must be signed by at least one-fourth of the total statutory number of deputies and notice of such a motion must be given at least fifteen days in advance.

"The second Sejm which will meet on the basis of this Constitution may revise this constitutional law with its own vote, taken by a majority of three-fifths in the presence of at least one half of the statutory number of deputies."

Czechoslovakia provides for amendment by the affirmative vote of three-fifths of all of the members of both houses; the proposed law must be designated as a constitutional law. Article 33.

In Yugoslavia, the proposal to amend may emanate from the King or from the National Assembly upon the affirmative vote of three-fifths of its total membership. After the legal proposal is made, the National Assembly is dissolved, elections are held, and the new National Assembly proceeds to accept or reject the proposed amendment. Article 126.

there is a widespread expectation that each of them will undergo numerous changes within the next few years. Yet after all, it seems not unlikely that in their main characteristics they will stand. All three countries are well started upon a vigorous national life under them; the legislation required to complete the governmental systems contemplated by them is rapidly being passed; as time goes on it will be increasingly difficult to upset the institutions which they have created or sanctioned.

To the rest of the world perhaps the most significant fact about these constitutions is that they are based upon the principles of representative, democratic government, and not upon any of the systems which during the past few years have been pictured in certain quarters as ready to supplant everything that is in the realm of politics and economics. In comparison with the working political institutions of the older states of Europe none of them represents any striking advance in democracy. Yet these new constitutions do record the progress of modern democratic institutions, because in them constitutional provision is made for many of the conventional or statutory practices, methods and principles by means of which the older nations have sought to adapt their governments to the ever-changing needs of modern life. A legal recognition of the actual relationship between the titular and the actual executive, the creation of a chief of state standing in power somewhere between the American President and the British King, an explicit declaration of the manner in which the responsibility of the government to the legislature will be enforced, the adoption of economic councils to participate to some extent in legislation, a careful provision for modern methods of national financial procedure—these and other interesting characteristics of one or more of these constitutions mark the trend of political development in Europe today. The experiences of these new states with such institutions cannot fail to enrich the political knowledge of all nations.

## CONSTITUTIONAL LAW IN 1920-1921. II

### THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1920

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#### IX. SELF-INCRIMINATION; SEARCHES AND SEIZURES

The "self-incrimination" clause of the Fifth Amendment was brought forward in five cases, in three of which it was attended by the "search and seizure" provisions of the Fourth Amendment. The most important of these cases was *Gouled v. the United States*,<sup>45</sup> in which the court was asked to pass upon the admissibility in evidence, first, of a paper obtained surreptitiously by officers of the government from the office of the accused; and secondly, of papers, described to be of "evidential value only," which were taken from the office of accused under a search warrant. The court, declaring that the constitutional provisions involved must receive "a liberal construction, so as to prevent stealthy encroachment upon . . . the rights secured by them," held that the government had no right to the possession of any of these papers nor to the use of them as evidence. At the same time, it was held that if the government had had the right to seize the papers in question, for instance, as so much contraband property, and had done so under a warrant sufficient in form, "then it would have been competent to use them to prove any crime against accused as to which they constituted relevant evidence."

In the course of his opinion, Justice Clarke remarked incidentally that "Searches and seizures are as constitutional under the Amendment when made under valid search warrants as they are unconstitutional, because unreasonable, when made without them." Unless the Fourth Amendment has been partially repealed by the Eighteenth

<sup>45</sup> 255 U. S. 298. For a review of some recent cases in the lower Federal Courts throwing light on this subject, see note in the March issue of the *Yale Law Journal* at page 518.

Amendment, which seems most improbable on general principles, this language, if adhered to, would seem to dispose of the contention of advocates of a drastic enforcement of the Volstead Act, that a search without warrant may at times be "reasonable."<sup>46</sup>

The doctrine of the *Gouled* case is carried a step further in *Amos v. the United States*,<sup>47</sup> in which it was ruled that the constitutional rights of an accused to be secure against unreasonable searches and seizures and self-incrimination were not waived by the action of his wife in permitting federal officers to search his home without warrant, and that the property thus obtained was not admissible evidence against him. On the other hand, it was ruled in *Burdeau v. McDowell*,<sup>48</sup> Justices Brandeis and Holmes dissenting, that constitutional guarantees would not be violated by the admission as evidence against an accused of incriminating papers stolen from him by private persons and afterwards delivered to officers of the government. "The government having come into possession of the papers without a violation of petitioner's rights by governmental authority," says the court, it is free to use them. Thus the rule seems to be that, while the government may not compel an accused to produce his own papers as evidence against himself, it may, by subpoena, force their production for the same purpose by any third person having possession of them.

Of the two remaining cases under this heading, the notorious "Nicky" Arnstein is the hero.<sup>49</sup> They held that "Nicky" was within his rights in refusing to testify, notwithstanding the provision of section 7 of the Bankruptcy Act, that no testimony given by a bankrupt shall be offered in evidence against him in any criminal proceeding, since this provision did not guarantee that such testimony would not be used to search out further evidence. The decision falls in line with the well-known case of *Counselman v. Hitchcock*.<sup>50</sup>

#### X. DUE PROCESS OF LAW; JUST COMPENSATION

Of the cases arising under the "due process of law" clause of the Fifth Amendment, the most interesting was *Goldsmith-Grant Company*

<sup>46</sup> For the line of reasoning by which it was established that these two constitutional provisions should be read as complementary, see *Boyd v. United States*, U. S. 616.

<sup>47</sup> 255 U. S., 313.

<sup>48</sup> 256 U. S.—.

<sup>49</sup> 254 U. S. 71, and *ibid.*, 379.

<sup>50</sup> 142 U. S. 547.

v. the United States.<sup>51</sup> An automobile had been found "guilty" of participating in the removal of distilled liquors to a place of concealment, and was, notwithstanding the claim of the innocent seller, who had reserved title to it, pronounced forfeited to the United States, in accordance with section 3450 of the Revised Statutes. To the objection that this was punishing A for the guilt of B, the court answered that, "in breaches of revenue provisions, some forms of property are facilities," wherefor "Congress interposes the care and responsibility of their owners in aid of the prohibitions of the law and its punitive provisions, by ascribing to the property a species of personality, a power of complicity and guilt in the wrong." The analogy of the ancient deodand was cited and also the passage from the Mosaic Law, "if an ox gore a man that he die, the ox shall be stoned, and his flesh shall not be eaten." It was Blackstone's view the opinion adds, "that such misfortunes are in part owing to the negligence of the owner," and that "therefore, he is properly punishable by such forfeiture;" but whether this was so or not, section 3450 had been on the statute books since 1866, and the principle underlying it had been sustained repeatedly.<sup>52</sup>

Interesting, too, is *Hollis v. Kutz*,<sup>53</sup> in which was involved the validity of certain orders of the Public Utilities Commission of the District of Columbia, whereby the price of gas to private consumers was increased while the price to the government in the district remained at the previous rate. The contention of plaintiffs that this was unlawful discrimination, since they were forced to make up the loss incurred by furnishing the gas to the government and district at a loss, was answered by the strange assertion that the power of the government in the premises was absolute. "We do not wish," said Justice Holmes for the court, "to belittle the claim of a taker of what for the time has become a necessity to equal treatment while gas is furnished the public." But "the plaintiffs are under no legal obligation to take the gas, nor is the government bound to allow it to be furnished. If they choose to take it, the plaintiffs must submit to such enhancement of price, if any, as is assignable to the government's demands." This language is not very explicit, but the rather extraordinary holding it conveys is apparently to be explained by the original contract between the government and the gas company.

<sup>51</sup> 254 U. S. 505.

<sup>52</sup> Citing the *Palmyra*, 12 Wheat. 1; *Distillery v. United States*, 96 U. S. 395; *United States v. Stowell*, 133 U. S. 1; and other cases.

<sup>53</sup> 255 U. S. 452.

Another decision sustained the right of the commissioner of the District of Columbia to assess and collect rent from the users of space under the sidewalks and streets of the district, notwithstanding that the utilization had been authorized by permits issued in conformance with previous regulations.<sup>54</sup> Such permits, the court pointed out, merely allowed what would otherwise have been a nuisance and in no wise abated the right and interest of the public. Yet another decision sustained the right of the territorial government of Alaska to levy a special license tax upon the manufacture of fish oil and fertilizer from herring.<sup>55</sup> "If," said the court, "Alaska deems it for its welfare to discourage the destruction of herring for canning and to preserve them for food . . . and to that end imposes a greater tax . . . than upon the similar use of other fish . . . it hardly can be said to be contravening a constitution that has known protective tariffs for a hundred years."

Lastly, *United States v. Rogers*<sup>56</sup> interprets the "just compensation" clause of the Fifth Amendment to require, in certain cases at least, the allowance of interest between the time of a taking of property by the government and the final payment of the private owner.

#### XI. THE SIXTH AMENDMENT

The Sixth Amendment was involved in three decisions. In the group of cases headed by the *United States v. Cohen Grocery Company*,<sup>57</sup> the court pronounced section 4 of the Lever Act void on the ground that, because of its indefiniteness, it did not permit one charged under it to be informed of the nature of the accusation against him and that for the same reason it virtually delegated legislative power to courts and juries to define offenses.<sup>58</sup> Said Chief Justice White for the majority:

<sup>54</sup> *District of Columbia v. Andrews Paper Co.*, and accompanying cases, 256 U. S.

<sup>55</sup> *Alaska Fish Co. v. Smith*, 255 U. S. 44.

<sup>56</sup> *Ibid.*, 163. The decision in a series of cases headed by *Winton v. Amos*, reiterates familiar doctrine regarding the plenary authority of Congress "over the Indians and all their tribal relations" and its "full power to legislate concerning their tribal property," 255 U. S. 373. Similarly, *Chase v. United States*, 256 U. S. 1, sustained the right of Congress to change the mode of disposition of certain unallotted lands in the Omaha Indian Reservation.

<sup>57</sup> 255 U. S. 81. Of the accompanying cases the most important is *Weeds, Inc. et al. v. United States*, *ibid.*, 109.

<sup>58</sup> The relevant provisions of the section read thus: "That it is hereby made unlawful for any person wilfully. . . to make any unjust or unreasonable rate or

"The section forbids no specific or definite act. . . . To attempt to enforce the section would be the equivalent of an effort to carry out a statute which in terms merely penalized and punished all actions detrimental to the public interest when unjust and unreasonable in the estimation of the court and jury." Justice Pitney, speaking for himself and Justice Brandeis, could not agree with this view of the matter. "In the absence," said he, "of a statutory definition of the method of determining a standard of prices with which to compare the prices alleged to have been excessive, the natural standard . . . is that adopted in the ordinary transactions of men and adhered to by the common law time out of mind,—the standard of fair market value. . . . So construed I regard this provision as clearly constitutional." The decision seems to indicate that if the government is to attempt the regulation of prices it must act through an expert body like the interstate commerce commission or the federal trade commission.

*Horning v. District of Columbia*<sup>59</sup> involved the "trial by jury" clause of the amendment. The question at issue was whether a federal judge, in a criminal case in which the facts were undisputed had the right to charge a jury to find the defendant guilty. A closely divided court found that the judge had such right, inasmuch as the jury still had the power, in returning a general verdict, to decide against both the law and the facts. The dissentients argued that the judge had assumed to do something he had no right to do, namely to direct a verdict, and that this constituted a reversible error. The latter is certainly

charge in handling or dealing in or with any necessities; to conspire, combine, agree, or arrange with any other person. . . . (e) to exact excessive prices for any necessities. . . . Any person violating any of the provisions of this section upon conviction thereof shall be fined not exceeding \$5,000 or be imprisoned for not more than two years, or both." 41 Stat. at L. 297. The government admitted that "a statute creating an offense must use language which will convey to the average mind information as to the act or fact which it is intended to make criminal." *United States v. Brewer*, 139 U. S. 278, 288. In support of its further contention that the above quoted provisions fulfilled this requirement, the government cited *Waters-Pierce Oil Co. v. Texas*, 212 U. S. 86; *Nash v. United States*, 229 U. S. 373; and *Miller v. Strahl*, 239 U. S. 426, 434. Former Justice Hughes was on the brief for those assailing the act in several of these cases. It is, therefore, interesting to compare his opinion for the court, disposing of a similar objection to the Federal Hours of Service Act of 1907 (34 Stat. at L. 1415), in *Baltimore and Ohio Ry. v. Interstate Commerce Commission*, 221 U. S. 612. See also 161 U. S. 29, and 227 U. S. 427.

<sup>59</sup> 254 U. S. 135.

the more logical view; an actual abuse of power in one quarter is hardly to be justified by the possibility of a similar abuse from another source.<sup>60</sup>

The third case referred to stands for the proposition that trial by court-martial of military persons for offences committed during imprisonment under military authority does not infract the right to trial by jury secured by the Sixth Amendment, nor the "due process of law" clause of the Fifth Amendment.<sup>61</sup> The decision is a logical application of the leading case of *Dynes v. Hoover*.<sup>62</sup>

#### XII. STATUTORY CONSTRUCTION: EXECUTIVE POWER

In *Duplex Printing Company v. Deering*,<sup>63</sup> the court found that the words "between . . . employers and employees" of section 20 of the Clayton Act are used in the specific sense of between employers and their employees, not somebody else's employees, or employees generically, and that the words "by peaceful and lawful means" of the same section refer to means that were lawful when the section was enacted or are made so by the act in question; and on this basis held that the Clayton Act does not legalize the secondary boycott in cases involving restraint of trade under the Sherman Act.<sup>64</sup> So "labor's

<sup>60</sup> The right to a jury in "suits at common law," secured by the Seventh Amendment was indirectly involved in *Sampliner v. Motion Picture Patents Co.*, 254, U. S. 233.

<sup>61</sup> *Kahn v. Anderson*, 255 U. S. 1. *Givens v. Zerst*, *ibid.*, 11, also deals with certain aspects of the general subject. Courts-martial, it is pointed out, being "tribunals of special and limited jurisdiction," their judgments, "so far as questions relating to their jurisdiction are concerned, are always open to collateral attack." It was held, however, that in case of such attack, the reviewing tribunal may admit evidence supplementing the court-martial record, to show the military status of an accused.

<sup>62</sup> 20 How. 65.

<sup>63</sup> 254 U. S. 443.

<sup>64</sup> Section 6 of the act was also involved indirectly in the case. The two sections read as follows:

"Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the Anti-trust Laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraint of trade, under the Anti-trust Laws."

"Sec. 20. That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an



bill of rights," as Mr. Gompers calls it, turns out to be something of a gold brick. Justice Brandeis filed a dissenting opinion for himself and Justices Holmes and Clarke, but Justice Pitney, for the majority, has much the better of the argument. If Congress wishes to make legal what the law has heretofore regarded as illegal, it should use unambiguous language for the purpose.<sup>65</sup>

The Volstead Act was involved in two cases. In *Street v. Lincoln Safe Deposit Company*<sup>66</sup> it was held that the word "kept" in section 3 of the act means kept for sale or barter, and that therefore the act does not forbid the storage in a warehouse, awaiting its use by the owner

employer and employees, or between employers and employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States." 38 Stat. at L. 737.

<sup>65</sup> The precise effect of section 20 still remains, however, a matter of doubt, and this doubt is increased rather than diminished by the more recent decision in *American Steel Foundries v. Tri-City C.T. Council* (decided December 5, 1921). In his opinion in the *Duplex* case, Justice Pitney declares that section 20 "imposes an exceptional and extraordinary restriction upon the equity powers of the courts of the United States and upon the general operation of the Anti-Trust Laws." A head note to the *American Steel Foundries* case, on the other hand, asserts that by section 20 "no new principle was introduced into the equity jurisprudence of the Federal courts," that section 20 is "merely declaratory of what was the best practice always." It is possible that a more careful comparison of the two opinions would clear up the seeming discrepancy.

<sup>66</sup> 254 U. S. 88.

himself or his *bona fide* guests, of liquors lawfully possessed before the act went into effect. In the other case it was held that the act had repealed certain sections of the Revised Statutes, making it criminal to defraud the government of taxes previously due it from persons conducting distilleries.<sup>67</sup> As a source of revenue to the government, at any rate, the distilleries have dried up.

The Harrison Anti-Narcotic Act was also under consideration in two cases. In the first, it was ruled that a physician registered under the act was not protected in selling opium to a dealer, but only to "patients" "in the course of his professional practice"—the words employed by the act itself.<sup>68</sup> In the other it was held that the act did not preclude supplementary legislation by the states in the exercise of their police powers.<sup>69</sup>

The Sherman Act and the "commodities" clause of the Hepburn Act were successfully invoked by the government in *United States v. Lehigh Valley Railroad Company*,<sup>70</sup> but in a later case private plaintiffs under the former act did not fare so well.<sup>71</sup> Two cases under the Federal Employers Liability Act developed the principle that the benefits of the act do not extend to "obvious" risks.<sup>72</sup> Similarly, a decision under the Safety Appliances Acts, mitigates their operation by the distinction between "proximate" and "remote" causes.<sup>73</sup>

*Berger v. the United States*<sup>74</sup> brought up for consideration for the first time section 21 of the Judicial Code. The court held, three judges dissenting, that the filing of an affidavit asserting personal bias on the

<sup>67</sup> *United States v. Yuginovich*, 256 U. S.

<sup>68</sup> *Jin Fuey Moy v. United States*, 254 U. S. 189.

<sup>69</sup> *Minnesota v. Martinson*, 256 U. S. 41.

<sup>70</sup> 254 U. S. 255.

<sup>71</sup> *Frey and Son v. Cudahy Packing Co.*, 256 U. S. 208, involving an alleged price-fixing agreement. Cf. *U. S. v. Shrader's Sons*, 252 U. S. 85.

<sup>72</sup> *Pryor v. Williams*, 254 U. S. 43; and *Southern Pacific Co. v. Berkshire*, *ibid.*, 415. A third case (*Phila. & Reading Ry. Co. v. Donato*, 256 U. S. 327) ruled that a flagman whose business it was to signal both interstate and intra-state trains, was engaged in interstate commerce, without regard to the character of the train he was flagging when killed; and a fourth case under the same act (*Phila. & Reading Ry. Co. v. Polk*, *ibid.*, 332) laid down like doctrine with respect to an employee caught between two cars of a train which was made up of both interstate and intra-state cars.

<sup>73</sup> *Lang v. N. Y. Cent. R. R. Co.*, 256 U. S.—. In *United States v. No. Pacif. Ry. Co.*, arising under the same act, it was held that transfer trains on a terminal track of an interstate carrier are subject to the act, 254 U. S. 251.

<sup>74</sup> 255 U. S. 22.

part of a trial judge leaves the judge no power to pass upon the truth or falsity of the facts alleged, but only power to pass upon their legal sufficiency, if true, to show prejudice. Of three cases arising under the Criminal Code, one determined that a baggage porter on a train was not an "officer of the United States" during the period of federal control;<sup>75</sup> another that the United States Shipping Board Emergency Fleet Corporation is not an "agency of the United States" within the sense of section 41 of the code,<sup>76</sup> and the third that the "possession" of any die or likeness for making coins of the United States, which is punished by section 169 of the code, means conscious possession.<sup>77</sup> The case of *Hogan v. O'Neill*, which arose under section 5278 of the Revised Statutes, holds that to be regarded as "a fugitive from justice" it is sufficient that one shall have left the state in which the crime is alleged to have been committed, whether for the purpose of escaping prosecution or not.<sup>78</sup>

Four cases arose under war statutes. Two asserted the right of Congress in time of war to authorize the seizure and sequestration, through executive channels, of property believed to be enemy-owned, subject only to the qualification that adequate provision be made for the return of the property in case of mistake.<sup>79</sup> The third is authority for the position that the liability of the director general under the Federal Control Act of March 21, 1918, is civil only and not penal,<sup>80</sup>

<sup>75</sup> *Krichman v. United States*, 256 U. S. 363.

<sup>76</sup> *United States v. Strang et al*, 254 U. S. 491.

<sup>77</sup> *Baender v. Barnett*, 255 U. S. 224. Justice Van Devanter, speaking for the court, quotes the following passage from an earlier decision:

"All laws should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter. The common sense of man approves the judgment mentioned by Puffendorf, that the Bolognian law which enacted 'that whoever drew blood in the streets should be punished with the utmost severity' did not extend to the surgeon who opened the vein of a person that fell down in the street in a fit. The same common sense accepts the ruling, cited by Plowden, that the Statute of 1st Edward II., which enacts that a prisoner who breaks prison shall be guilty of felony, does not extend to a prisoner who breaks out when the prison is on fire,—'for he is not to be hanged because he would not stay to be burnt.'" *United States v. Kirby*, 7 Wall. 482.

<sup>78</sup> 255 U. S. 52. Section 5278 of course supplements Article IV, section 2, paragraph 2, of the Constitution.

<sup>79</sup> *Central Union Trust Co. v. Tarvan*, 254 U. S. 554; *Stoeck v. Wallace*, 255 U. S. 239.

<sup>80</sup> *Missouri Pac. R. R. Co. v. H. A. F. Ault*, 256 U. S.—.

while the fourth discloses a doubt whether, under the Tucker Act, anybody is liable at all for derelictions of the telegraph companies during the period of federal control.<sup>81</sup>

Some of these cases, and others also, bear upon the subject of executive power. One of the latter illustrates the court's deference to consistently maintained executive constructions of treaties of the United States.<sup>82</sup> Another defines "peace in the complete legal sense" as peace which has been officially claimed, that is to say, by the President.<sup>83</sup> A third reiterates familiar doctrine concerning the finality of findings of fact by the interstate commerce commission.<sup>84</sup> And a fourth, *Sutton v. United States*,<sup>85</sup> announces this rule, as stated in the syllabus of the case: "No government official can, by his acts or omissions, render the United States liable, as upon an implied contract, for work done by a government contractor after the appropriation therefore was exhausted, where no such official could have rendered the United States liable for such work by express contract."

## B. QUESTIONS OF STATE POWER

### I. FREEDOM OF SPEECH AND PRESS

In *Gilbert v. Minnesota*,<sup>86</sup> plaintiff in error, who had been convicted under a state statute making it unlawful to advocate or teach that men should not enlist in the forces of the United States or of the state, or assist in waging war against the public enemies of the United States, raised two objections to the act in question; first, that it invaded a field of power reserved exclusively to the United States, to wit, that of "the war powers;" second, that it was obnoxious to "the inherent right of free speech respecting the concerns, activities and interests of the United States and its government." The court rejected both contentions. The United States and the states, said Justice McKenna, in effect, are all in the same boat. There is, therefore, nothing to prevent the latter from making the purposes of the former their purposes too and so prohibiting their citizens from obstructing such purposes. And as to freedom of speech, conceding it to be "a natural and inherent"

<sup>81</sup> *Western Un. Tel. Co., v. Poston*, 256 U. S.—.

<sup>82</sup> *Sullivan v. Kidd*, 254 U. S. 433.

<sup>83</sup> *Givens v. Zerbst*, 255 U. S. 11.

<sup>84</sup> *Seaboard Air Line Ry. v. United States*, 254 U. S. 57.

<sup>85</sup> 256 U. S.—.

<sup>86</sup> 254 U. S. 325.

right, yet it "is not absolute—it is subject to restriction and limitation." Gilbert's speech "was not an advocacy of policies or a censure of actions that citizens had the right to make." Curiously enough, Justice McKenna does not mention the fact that the First Amendment does not protect the citizen against the states, nor does he refer to the "due process" clause of the Fourteenth Amendment as limiting state power in relation to freedom of speech and press.

Justice Holmes concurred in the result. "The Chief Justice, being of the opinion that the subject matter is within the exclusive power of Congress, when exerted, and that the action of Congress has occupied the whole field," dissented. Justice Brandeis also dissented, urging that as Congress is charged with the sole responsibility in the waging of war, its policies relating to freedom of discussion during war time ought not to be subject to state interference and interruption, a view which obviously has much to be said for it. He also made a good argument on the "privileges and immunities" clause of the Fourteenth Amendment, urging that Gilbert was only exercising his right as a "citizen of the United States" to criticize the national government, a right therefore, which no state may "abridge."

## II. THE "COMMERCE" CLAUSE

All the cases save one under the "commerce" clause invoked it simply as a restriction on state power, and all except two make fairly obvious application of accepted principles. One informs us that the transmission of a telegram between two points in the same state over a route passing out of the state is "interstate commerce;"<sup>87</sup> another also classifies as "interstate commerce" the carriage of a person and baggage on an interstate ticket from one point to another in the same state;<sup>88</sup> while a third asserts the doctrine that a stream which is navigable in fact remains so in law despite artificial obstructions which may be abated by proper legal authority.<sup>89</sup> Two cases involving the states' taxing power turned on the general proposition that a state franchise tax on a domestic railway company does not contravene the commerce clause although the value of the franchise is derived in part from the corporation's interstate business.<sup>90</sup> Also, a telegraph company may be

<sup>87</sup> *Western Un. Tel. Co. v. Speight*, *ibid.*, 17.

<sup>88</sup> *Galveston, H. & S. A. R. Co. v. Woodbury*, *ibid.*, 357.

<sup>89</sup> *Economy Light & Power Co. v. United States*, 256 U. S. 113.

<sup>90</sup> *St. Louis & E. St. L. Electric R. Co. v. Missouri*, *ibid.*, 314; *St. Louis-San Francisco Ry. Co. v. Middlekamp*, *ibid.*, 226.

required to pay a city a small annual license tax for the privilege of doing intra-state business, even though at a loss, the tax having been in existence when the company entered the city;<sup>91</sup> also a state may tax as net profits earned within its limits such proportion of the total net profits of a manufacturing and trading corporation as the tangible assets of the corporation within the state bear to the corporation's total tangible property, provided that payment of such tax be secured by the same means as that of ordinary taxes and not made a condition precedent to the corporation's doing business within the state.<sup>92</sup> On the other hand, a state license tax upon local selling agents for automobiles may not discriminate in favor of the product of local manufacturers;<sup>93</sup> nor may a state levy an excise tax on the sale of gasoline in tank cars or other original packages in which it is brought into the state from another state, although the state may levy such a tax on sales at retail, and even on the use of gasoline in small quantities by the importer himself.<sup>94</sup> The introduction of the original package doctrine into the field of state taxation, which was noted last term, is thus confirmed.<sup>95</sup> It is to be hoped that it will cause the court less vexation than it has in the field of the police power.<sup>96</sup>

The general legislative power of the state in relation to the commerce clause was vindicated in two cases. In the first it was held that a bridge company chartered by the state of New York to construct a railroad bridge over the Niagara River might be required by the state, in the exercise of its reserved right to amend charters granted by itself, to perform certain additional services reasonable in character, even though the bridge in question had been authorized by Congress and recognized by the secretary of war as a lawful structure.<sup>97</sup> In the other, the important principle was laid down that the right of the United States in the navigable waters within the several states is limited to the control thereof for purposes of navigation and that subject to that right, each state is the owner of the navigable waters within its boundaries and of the land lying thereunder.<sup>98</sup> A third case decided

<sup>91</sup> *Postal Telegraph-Cable Co. v. Tremont*, 255 U. S. 124.

<sup>92</sup> *Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113.

<sup>93</sup> *Bethlehem Motors Corporation v. Flynt*, 256 U. S. 421.

<sup>94</sup> *Bowman v. Continental Oil Co.*, *ibid.*,—.

<sup>95</sup> See *Askren v. Continental Oil Co.*, 252 U. S. 444. The previously dominant rule was that laid down in *Brown v. Houston*, 114 U. S. 622.

<sup>96</sup> See *Austin v. Tennessee*, 179 U. S. 343.

<sup>97</sup> *International Bridge Co. v. N. Y.*, 254 U. S. 126.

<sup>98</sup> *Seattle v. Oregon & Washington R. Co.*, 255 U. S. 56.

that a railway company cannot be required to detour two interstate trains a day to a town of four thousand inhabitants, which was already served by fourteen local trains, seven each way.<sup>99</sup>

### III. DUE PROCESS OF LAW; EQUAL PROTECTION OF THE LAWS

With the single exception of *Brown Holding Company v. Feldman*,<sup>100</sup> which was dealt with above in connection with *Block v. Hirsch*,<sup>101</sup> none of the cases involving state legislation in relation to "due process of law" and the "equal protection" clauses of the Fourteenth Amendment, offered much of novelty or special interest. The right of a state, under the police power, to prohibit certain wasteful uses of natural gas, and for that purpose to confine its regulations to sources of supply within ten miles of incorporated towns or industrial plants, was sustained;<sup>102</sup> also the right of a state to repeal the optional features of a workman's compensation act and to establish a state fund for compulsory contributions by employers;<sup>103</sup> also the right to make a general workman's compensation act compulsory as to a single hazardous employment, coal mining;<sup>104</sup> also the right to require a railway corporation to abolish, at its own expense, whatever the cost, existing grade crossings;<sup>105</sup> also the right to require the demolition of wooden buildings found by the courts to have been erected within fire limits contrary to valid regulations.<sup>106</sup> On the other hand, a state may not segregate a class of traffic and compel a carrier to transport it in intra-state commerce without substantial compensation, although the return to the carrier from its entire state operations may be adequate;<sup>107</sup> nor may rates set by municipalities for public service corporations be confiscatory in the absence of contract obligation on the part of the corporation;<sup>108</sup> and the powers of municipalities in the making of such contracts will be closely scrutinized.

<sup>99</sup> *St. Louis and San Francisco Ry. Co. v. Public Service Comm.*, 254 U. S. 535.

<sup>100</sup> 256 U. S. 170.

<sup>101</sup> *Ibid.*, 135; see note 24 *supra*.

<sup>102</sup> *Walls v. Midland Carbon Co.*, 254 U. S. 300.

<sup>103</sup> *Thornton v. Duffy*, 254 U. S. 361.

<sup>104</sup> *Lower Vein Coal Co. v. Industrial B'd*, 255 U. S. 144.

<sup>105</sup> *Erie R. R. Co. v. B'd. of Public Utility Com'rs*, and several other cases, 254 U. S. 394.

<sup>106</sup> *Maguire v. Reardon*, 255 U. S. 271.

<sup>107</sup> *Vandalia R. R. v. Schnull*, 255 U. S. 113.

<sup>108</sup> *So. Iowa Electric Co. v. Chariton*, 256 U. S.—; *San Antonio v. San Antonio Public Service Comm.*, *ibid.*—.

Under the taxing power, the application of the "unit rule" to the tangible property of a foreign corporation was sustained under both the "due process of law" and the "equal protection" clauses, the tax being one to which domestic as well as foreign corporations were subject.<sup>109</sup> Also, the exaction of an additional transfer tax in the case of bonds and other obligations of a resident decedent, which had hitherto escaped taxation, was found harmonious with these clauses.<sup>110</sup> Also, it was held that the maxim that a tax must be for a public purpose, which is today safeguarded by the "due process of law" clause, was not infringed by the action of the state in distributing among its local units the proceeds of a state income tax;<sup>111</sup> nor by the requirements that the proceeds from a dog licence be paid to the society for the prevention of cruelty to animals.<sup>112</sup> In one case a special assessment was sustained against the charge of arbitrariness,<sup>113</sup> and in another such an assessment was set aside.<sup>114</sup> Lastly, a tax was set aside on the ground that notice and hearing had not been accorded the tax payer.<sup>115</sup>

#### IV. THE "OBLIGATION OF CONTRACTS" CLAUSE

In *Detroit United Railway v. Detroit*,<sup>116</sup> the last of a series of cases involving the same parties, the company was informed of what it should have known to begin with, namely, that the "obligation of contract" clause would not maintain it in possession of the city streets after its franchise had expired. Another case vindicates the exercise by a state of the right reserved by it to amend a corporation franchise,<sup>117</sup> and still another the like right to repeal.<sup>118</sup> The general subordination

<sup>109</sup> *Underwood Typewriter Co. v. Chamberlain*, 254 U. S. 113.

<sup>110</sup> *Watson v. State Comptroller*, *ibid.*, 122.

<sup>111</sup> *Dane v. Jackson*, 256 U. S.—.

<sup>112</sup> *Niechia v. New York*, 254 U. S. 228.

<sup>113</sup> *Miller & Lux v. Sacramento & San Joaquin Drainage Dist.*, 256 U. S. 129.

<sup>114</sup> *Kansas City So. Ry. Co. v. Road Improvement Dist.*, *ibid.*,—.

<sup>115</sup> *Turner v. Wade*, 254 U. S. 64. Payment, under a state law, of damages and attorney's fees, as for a vexatious delay, was allowed, in peculiar circumstances, in *Hartford Life Ins. Co. v. Blincoe*, 255 U. S. 129. See also next note. Two other cases in which the "due process of law" clause was invoked were *Bullock v. Railroad Comm. of Florida*, 254 U. S. 513, and *Ownbey v. Morgan*, 256 U. S. 94. In both, however, the facts were so special as to make the holdings of little interest.

<sup>116</sup> 255 U. S. 171. The appellant company also invoked unavailingly the "due process of law" clause of the Fourteenth Amendment.

<sup>117</sup> *International Bridge Co. v. New York*, 254 U. S. 126.

<sup>118</sup> *New York ex rel Troy Union R. R. Co. v. Mealy*, *ibid.*, 47.



of the obligation of contracts to the states' police power was asserted in the Feldman case in broad terms, notwithstanding which it was ruled in another case that a state could not exempt the proceeds of a life insurance policy taken out prior to the act from liability for antecedent debts.<sup>119</sup>

#### V. NATIONAL SUPREMACY

Chief Justice Marshall laid down the rule in *McCulloch v. Maryland*,<sup>120</sup> more than a hundred years ago, that a state cannot tax an instrumentality of the national government. By the same sign, it was held in *Johnson v. Maryland*,<sup>121</sup> a state may not require a post-office employee to cease driving a government motor truck in the transportation of mail over a post road until he should obtain a license from the state. Besides citing the *McCulloch* case Justice Holmes, speaking for the court, also quoted the following apt passage from Marshall's opinion in *Osborn v. Bank of the United States*:<sup>122</sup> "Can a contractor for supplying a military post for provisions be restrained from making purchases within any state or from transporting the provisions to the place at which troops were stationed? Or could he be fined or taxed for doing so? We have not yet heard these questions answered in the affirmative." "Of course," Justice Holmes continues, "an employee of the United States does not secure general immunity from state law while acting in the course of his employment . . . ." It may very well be that "when the United States has not spoken, the subjection to local law would extend to general rules that might affect incidentally the mode of carrying out the employment,—as for instance, a statute or ordinance regulating the mode of turning at the corners of streets. . . . But even the most unquestioned and most applicable of state laws, such as those concerning murder, will not be allowed to control the conduct of a marshal of the United States acting under and in pursuance of the laws of the United States."<sup>123</sup>

<sup>119</sup> *Bank of Minden v. Clement*, 256 U. S., 126 citing *Sturges v. Crowninshield*, 4 Wheat. 197, *Planters' Bank v. Sharp*, 6 How. 327, and other old cases. On the other hand, see *Mugler v. Kansas*, 123 U. S. 623, and *Manigault v. Springs*, 199 U. S. The discrepancy between the two classes of decisions is explained by the fact that, in the latter, to have denied the statutes involved a retroactive operation, would have been to defeat an exigent legislative policy.

<sup>120</sup> 4 Wheat. 316.

<sup>121</sup> 254 U. S. 51.

<sup>122</sup> 9 Wheat. 738.

<sup>123</sup> Citing in *re Neale* 135 U. S. 1.

The question of state taxation of federal instrumentalities was directly raised in two cases. In one the court held that a state tax upon bank stock, state and national, at a higher rate than was imposed upon intangible personal property generally, including bonds, notes, and other evidences of indebtedness, violated section 5219 of the Revised Statutes, which provides that state taxation of national bank stock "shall not be at a greater rate than is assessed upon other monied capital."<sup>124</sup> In the other it held that a certain railway line, the property of a private company, was subject to state taxation, despite the fact that it was utilized by the government in developing certain coal lands for the Choctaw Indians.<sup>125</sup> The apparent discrepancy between the two rulings is explained by a reference to the precedents, which treat national banks as in themselves instrumentalities of the national government but regard railway lines, like the one here involved, as primarily private enterprises, although performing *inter alia* national services.<sup>126</sup>

A sounder basis for the distinction would be, it is submitted, the will of Congress as measured by the "necessary and proper" clause.

This term the court handed down opinions in 194 cases, about 85 of which involved constitutional issues more or less directly. The "commerce" clause was involved in 12 of these cases; the "due process of law" clause of either the Fifth or Fourteenth Amendments, in 28 cases in its general sense, and in 3 cases in its procedural sense; the "equal protection" clause was invoked 10 times; the "obligation of contracts" clause, 7 times; the "self-incrimination clause," 5 times. The largest number of opinions was prepared by Justice McKenna who spoke for the court 30 times, while the late Chief Justice is represented by only 18 opinions of the court, 7 of which are hardly more than references to an eighth. Once again Justice Pitney has the longest opinion of the term to his credit, while those rendered by Justice McReynolds are usually notable for their brevity. In 35 cases dissents were announced, but opinions were rendered in only 13 of these, and in only 5 did as many as four justices dissent. The most important dissenting opinion was the dissenting-concurring opinion of Justice Pitney in the Newberry Case, which probably foreshadows what will finally be the view of the court on the constitutional question there involved.

Before the term ended the death of Chief Justice White had occurred. He was first elevated to the bench as an associate justice by Mr. Cleve-

<sup>124</sup> Merchants' National Bank v. Richmond, 256 U. S.—.

<sup>125</sup> Choctaw, O., & G. R. R. Co. v. Mackey, *ibid.*,—.

<sup>126</sup> See Union P. R. Co. v. Peniston, 18 Wall. 5; also, Central P. R. Co. v. California, 162 U. S. 91.

land in 1893, after the Senate had rejected two other nominees through the exercise of "senatorial courtesy." Mr. White was himself a Senator from Louisiana at the time, and so his nomination escaped this blighting taboo. Upon the death of Chief Justice Fuller, President Taft nominated Justice White as the former's successor, after, it is said, a hint had come from the other justices that they would prefer that arrangement to the appointment of Mr. Hughes, who was reported to be slated for the post. Mr. Hughes was later made associate justice and Mr. Taft himself now succeeds Chief Justice White.

The late Chief Justice was a native of Louisiana and a Catholic, and received his early training in a Jesuit school. His judicial opinions are characterized by a pronounced preference for words of Latin origin, long periodic sentences, and a drastically syllogistic method. Like those of Chief Justice Marshall, they are pervaded with the spirit of debate; and they do not always avoid an additional flavor of casuistry. A fair sample of his art is to be found in his opinion in the Selective Draft cases.<sup>127</sup> Other notable utterances were his opinions for the court in the Commodities' Clause Case<sup>128</sup> and in the Standard Oil and Tobacco Trust Cases,<sup>129</sup> both of which also attest his skill as a compromiser.

A Confederate soldier in his youth, Chief Justice White died a convinced nationalist, but perhaps the phrase for which he will be longest remembered is one coined by him in the Standard Oil case—"the rule of reason." The same phrase points, moreover, to his chief contribution to current constitutional theory, the encouragement he lent the doctrine that Congress' power to prohibit interstate commerce is not, as Marshall stated in *Gibbons v. Ogden*,<sup>130</sup> limited only by that body's responsibility to its constituents, but rather by judicially enforceable, even if somewhat vague, constitutional limitations, a doctrine which was exemplified in the recent child labor case.<sup>131</sup> In his opinion in the oleomargarine case,<sup>132</sup> Justice White, as he then was, would fain have set up similar limitations to Congress' taxing power; but this time Marshall's influence was too potent to be overcome; and the power to tax, when wielded by the national government, still "involves the power to destroy."

<sup>127</sup> 245 U. S. 366.

<sup>128</sup> *Delaware & Hudson Co. v. U. S.*, 213 U. S. 366.

<sup>129</sup> 221 U. S. 1.

<sup>130</sup> 9 Wheat. 1.

<sup>131</sup> *Hammer v. Dagenbart*, 247 U. S. 251.

<sup>132</sup> *McCray v. U. S.* 195 U. S. 27.

## LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

**Amendments To State Constitutions 1919-21.** The following tables set forth the various amendments to the state constitutions which were submitted to the electors and voted on during the years 1919, 1920 and 1921. The information thus disclosed articulates with the last table on the same subject published in the REVIEW.<sup>1</sup> Table I gives the amendments which have been submitted to a vote of the people and Table II gives information on amendments which are now pending.

Altogether, 360 proposed constitutional changes have been acted on during the three years—37 in 1919, 237 in 1920, and 46 in 1921. The total for the two years 1919 and 1920 (274) was considerably larger than that for the previous biennial period (206). The results reported indicate that 198 proposals were adopted and 101 failed. Of those submitted in 1920 (mainly at the general election in November), more than two-thirds were adopted; while of those submitted in 1919 and 1921 about two-thirds failed to carry.

The largest number of amendments voted on in one state were the 41 in Nebraska, submitted by the constitutional convention at a special election in September, 1920, all of which were adopted. In South Carolina, 35 amendments were voted on in 1920, all of which appear to have been adopted. Texas voted on 18 proposed amendments during the three years, 11 in 1919. In Missouri, 17 proposals were voted on, of which 13 were adopted. New Mexico voted on 15 measures (12 at a special election in September, 1921) of which 5 were adopted. Georgia voted on 14 proposals in 1920, all of which were adopted. Indiana voted on 13 proposals at a special election in September, 1921, only one of which was adopted. In New York, 12 amendments were acted on, 7 of which were adopted. Michigan voted on 10 proposals, of which 5 were adopted.

At least 102 proposed amendments are now pending in 24 states. Some of them must be approved by the legislature before submission to popular vote. Pennsylvania has 12 proposals, 5 to be

<sup>1</sup> 13 *American Political Science Review*, 439 (August, 1919).

voted on in November, 1922 and one in November, 1924, while 6 others require further legislative action. In New York, 10 proposed amendments have passed one legislature.

Massachusetts in 1919 voted to accept a rearrangement of its state constitution, incorporating all the amendments to the document of 1780. Several states have voted on the question of calling a constitutional convention. In Wisconsin, this action has been approved; but in California, Tennessee and Texas the proposals failed to carry.

Eighteen states voted on 22 amendments relating to the suffrage. Five states (Arkansas, Michigan, Mississippi, Nebraska and North Dakota) provided for woman suffrage; but in Texas an amendment for this purpose was defeated in 1919. Proposed amendments to the same end are pending in Missouri, Pennsylvania, Vermont and Virginia. Thirteen states voted on other suffrage amendments, authorizing absent voting, or imposing restrictions such as full citizenship or ability to read. Proposed amendments relating to absent voting are pending in California and New York.

Proposed changes in the provisions relating to the initiative and referendum were voted on in three states. They were defeated in Arkansas and California; but a reduction in the number of signatures to petitions was adopted in Nebraska. North Dakota adopted an amendment providing for the recall.

A considerable number of amendments have dealt with minor changes in the structure of state government. Oregon has given the governor power to veto items of appropriations; but a proposal for this purpose in Indiana was defeated. A proposed amendment to the same effect is pending in Connecticut. A number of states have voted on changes relating to the legislature, the judiciary and state officers. Proposals for salary increases in about a dozen states were usually defeated; but in Georgia an amendment to increase judges salaries, and in Nebraska one to increase the salary of legislators, were adopted.

Fourteen states voted on proposed amendments relating to local government, and eleven on proposals on education and schools, most of them of little importance. In Georgia, 4 amendments provided for the creation of new counties. In South Carolina, 32 of the 35 amendments related to debt limits in particular cities and counties. Municipal home rule charter amendments are pending in Pennsylvania and Wisconsin; and a proposed amendment in Nevada will empower the legislature to grant charter making powers to cities.

The most numerous class of proposed amendments were those relating to taxation. In nineteen states, 37 amendments on this subject were voted on; and 14 proposals are pending in eleven states. Many of these are of minor importance. One of the Nebraska amendments provides for uniform taxation of tangible property and franchises, and for classification of other property. A classification amendment was defeated in Ohio. North Carolina adopted an income tax amendment; but income tax proposals in Maine, New Hampshire, Indiana and Minnesota were lost. Single tax proposals were again defeated in California and Oregon. Classification amendments are pending in Pennsylvania, Tennessee and Utah; and income tax proposals in Michigan and Tennessee.<sup>2</sup>

Fourteen states voted on amendments relating to highways, most of them providing for bond issues for road building. Michigan approved an increase of \$50,000,000 in the state debt for highways; Missouri authorized a bond issue for \$60,000,000; and other proposals were adopted in Colorado and Kansas; while proposed amendments were defeated in Florida, Oklahoma and Texas—the last for a bond issue of \$75,000,000. Proposals authorizing state road bonds are pending in Pennsylvania and Wisconsin.

Other amendments for state public works were for state harbors in Alabama, water power development in Idaho and public wharves in Maine. A number of amendments related to control over public utilities.

Four states voted on amendments for the prohibition of the liquor traffic. Kentucky and Texas adopted prohibition, Michigan defeated a proposal to repeal the prohibition amendment, while in Ohio a prohibition amendment was defeated.

In five states (Maine, Michigan, Missouri, Oregon and South Dakota) proposed amendments relating to a soldiers bonus were adopted. Louisiana and Mississippi adopted amendments for pensions to Confederate soldiers; but a similar proposal in Texas was defeated. A soldiers' bonus amendment is pending in Pennsylvania. In some other states proposals for a soldiers' bonus have been submitted to popular vote or are pending, not as constitutional amendments, but under the provisions of the existing constitution.

CHARLES KETTLEBOROUGH.

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<sup>2</sup> See 16 *American Political Science Review*, 53 (February, 1922).

TABLE I—AMENDMENTS SUBMITTED

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
<i>Alabama</i>				
Poll tax—Exempting World War veterans until 1923	New sec. 194½	1920		
Road tax—Counties authorized to collect special tax, not to exceed \$.50	New Art.	Nov. 1920		
State highway system—Bond issue of \$25,000,000 for establishment and maintenance	Sec. 1a, new Art. 20	1920		
Taxation—Certain municipalities authorized to levy ¼ of 1 per cent excess property tax	New sec.	1920		
Harbors—State authorized to establish, manage and control	Sec. 93, Art. iv.	1920		
Counties—Authorized to engage in internal improvements	New Art.	1920		
Highway Bonds—Rate of interest fixed	Art. 20.	Feb. 1921		
Suffrage — Qualifications good character and an understanding of duties and obligations of citizenship	(Sec. 178), Art. 8.	Feb. 8, 1921		
<i>Arizona*</i>				
Legislature—Permitting members to hold lucrative civil office, the term of which begins after expiration of members' term.	Sec. 5, sub-div. 2, Art. iv.	Nov. 1920	8,945	26,520
Tax Commission—Election of members	New	Nov. 1920	9,592	25,234
Teachers and public officers—Salary increase (Init.)	New Art. xxv	Nov. 20	13,701	28,053

\* Adopted by majority of votes cast.

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
<i>Arkansas</i>				
Initiative—Electors may approve or reject appropriation bills—Necessary number of signatures increased—Powers of electors extended to govern local measures. (Init.)	Sec. 1, Art. v	1920	86,360	43,662
Woman suffrage—Women not compelled to serve on juries—Aliens denied right of suffrage	Sec. 1, Art. III	1920	87,237	49,751
Judges—Supreme Court—Fixing the number and compensation	Sec. 2, Art. VII	1920	65,085	63,211
Taxation—Road tax of 12 mills		Not submitted. <sup>4</sup>		
<i>California</i>				
Highway finance board created (Init.)	New sec. 3, Art. XVI	Nov. 2, 1920	435,492	311,637
Schools—Kindergartens a part of system—Funds increased	Sec. 6, Art. IX	Nov. 2, 1920	506,008	268,781
Alien poll tax	Sec. 12, Art. XIII	Nov. 2, 1920	667,924	147,212
Taxation—Exemption—Orphanage	New sec. 1½a, Art. XIII	Nov. 2, 1920	394,014	371,658
State aid for orphanages supporting children of incapacitated fathers	Sec. 22, Art. IV	Nov. 2, 1920	487,023	222,247
Justices—Salaries (Init.)	Sec. 17, Art. VI	Nov. 2, 1920	232,418	538,655
Initiative (Init.)	Sec. 1, Art. IV	Nov. 2, 1920	298,347	421,945
Vaccination—Compulsory prohibited (Init.)	Sec. 15, Art. IX	Nov. 2, 1920	359,987	468,911
Taxation—State university (Init.)	Sec. 15, Art. XIII	Nov. 2, 1920	380,027	384,667
Taxation—Land values (Init.)	Sec. 15, Art. XIII	Nov. 2, 1920	196,694	563,503

<sup>4</sup> Constitution permits only three amendments to be submitted at one time.



TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Constitutional convention	Sec. 2, Art. XVIII	Nov. 2, 1920	203,240	428,002
Suffrage—Absent voter	Sec. 1, Art. II	Nov. 2, 1920	356,539	371,784
Indebtedness—State— Providing for issuance and sale of bonds	New sec. 2, Art. XVI	Jul. 1, 1919		
<i>Colorado</i>				
County Judges—Number increased	Sec. 22, Art. IV	Nov. 1920	35,095	97,398
Public officers—Salary in- crease	Sec. 30, Art. V	Nov. 1920	49,313	112,879
Taxation—Increase of 1 mill for educational purposes (Init.)	Sec. 11, Art. X	Nov. 1920	160,268	52,324
Highways—Bond issues for improvements	Sec. 3, Art. XI	Nov. 1920	100,130	70,997
<i>Delaware</i>				
Judiciary—Chief justice may grant restraining orders in absence of chancellor from county in which suit in equity has been instituted	Sec. 17, Art. IV	Published before Gen. Elec- tion 1920	Adopted by legis- lature, 1921. Approved Mar. 31, 1921	
Legislature—Compensa- tion	Sec. 15, Art. II		Adopted by legis- lature, 1919.	
<i>Florida</i>				
Highways—Empowering legislature to issue bonds not exceeding 5 per cent total assess- ment	Sec. 6, Art. IX	1920	34,504	54,510
<i>Georgia</i>				
School tax—Local	Par. 1, Sec. 4, Art. VIII	Nov. 1920	Adopted	
Lanier County—Creation of	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
Lanier County—Creation of	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
Long County—Creation of	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
Seminole County—Crea- tion of	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Apportionment of representation to new counties	Par. 1, Sec. 3, Art. III	Nov. 1920	Adopted	
Judicial circuit—Lanier County	Par. 2, Sec. 1, Art. II	Nov. 1920	Adopted	
Judges—Salary increase	Par. 1, Sec. 13, Art. VI	Nov. 1920	Adopted	
Soldiers' pensions	Par. 1, Sec. 1, Art. VII	Nov. 1920	Adopted	
Street improvement bonds issued upon authority of council	Par. 1, Sec. 7, Art. VII	Nov. 1920	Adopted	
Debt limit—Authorizing West Point to increase	Par. 1, Sec. 7, Art. VII	Nov. 1920	Adopted	
School appropriations—Legislature authorized to make	Par. 1, Sec. 6, Art. VIII	Nov. 1920	Adopted	
Brantley County created	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
Lamar County created	Par. 2, Sec. 1, Art. XI	Nov. 1920	Adopted	
<i>Idaho</i>				
Supreme Court—Increasing the number of justices from 3 to 5	Sec. 6, Art. V	Nov. 1920	35,265	30,989
Public utilities commissions—Supreme court given jurisdiction from appeals from orders of	Sec. 9, Art. V	Nov. 1920	33,570	26,020
School lands—To permit the sale of 200 sections annually in place of 100 sections	Sec. 8, Art. IX	Nov. 1920	30,790	31,850
Water power—Authorizing the state to control and promote development of	Sec. 2, Art. VIII	Nov. 1920	32,322	27,812
<i>Indiana</i>				
Suffrage—Restricted to fully naturalized citizens	Sec. 2, Art. II	Sept. 6, 1921	130,242	80,574

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VETO	
			Yes	No
Registration—Classification of counties townships, cities and towns	Sec. 14, Art. II	Sept. 6, 1921	90,269	110,333
Legislature—Apportionment on basis of vote for secretary of state	Sec. 4, 5, Art. IV	Sept. 6, 1921	76,963	117,890
Veto—Items in appropriation bills	Sec. 14, Art. V	Sept. 6, 1921	83,265	101,790
State officers—Term fixed at 4 years	Sec. 1, Art. VI	Sept. 6, 1921	74,177	113,300
County officers—Term fixed at 4 years	Sec. 2, Art. VI	Sept. 6, 1921	82,389	115,139
Prosecuting attorney—Term fixed at 4 years	Sec. 11, Art. VII	Sept. 6, 1921	76,587	116,683
Lawyers—Qualifications prescribed by legislature	Sec. 21, Art. VII	Sept. 6, 1921	78,431	117,479
Education—Appointment of state superintendent	Sec. 8, Art. VIII	Sept. 6, 1921	46,023	149,294
Taxation—Legislature to provide system	Sec. 1, Art. X	Sept. 6, 1921	31,786	166,186
Taxation—Income	Sec. 8, Art. X	Sept. 6, 1921	39,005	157,827
Militia—Colored persons admitted	Sec. 1, Art. XII	Sept. 6, 1921	55,027	142,909
Public officers—Terms and salaries cannot be increased during term	Sec. 2, Art. XV	Sept. 6, 1921	80,191	117,140
<i>Iowa</i>				
Woman suffrage	Sec. 1, Art. II		Not submitted	
<i>Kansas</i>				
Taxation—Authorizing the state to raise revenue	Sec. 1 & 2, Art. XI	Nov. 1920	170,710	218,931
Highways—State authorized to construct	Sec. 8, Art. XI	Nov. 1920	284,689	193,347
Farm homes—State aid in purchase of—	New sec. 11, Art. XV	Nov. 1920	223,499	201,559
<i>Kentucky</i>				
Prohibition		Nov. 1919	Adopted	
Peace officers—Removal for neglect of duty in cases of lynching	Sec. 227	Nov. 1919		

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
School funds—Legislature to prescribe manner of distribution	Sec. 186	Nov. 1920		
Education — Superintendent of, an appointive office	Sec. 91, 93, 95	Nov. 1920		
<i>Louisiana</i>				
Taxation—Local tax for schools		Nov. 1920	49,781	24,492
Taxation—State tax of 1 mill for schools		Nov. 1920	57,686	24,009
Port of New Orleans—Organization and powers of the board of commissioners		Nov. 1920	43,099	23,920
Fire and police departments—New Orleans to levy a special tax		Nov. 1920	47,654	22,824
Port of New Orleans—Increasing the power of commissioners		Nov. 1920	42,771	23,609
Pensions — Confederate veterans	Art. 303	Nov. 1920	54,863	21,215
Electors—Qualifications	Art. 200	Nov. 1920	40,909	24,225
Taxation—Exemption of industries—Located on navigation canal	Art. 230	Nov. 1920	10,056	56,975
<i>Maine</i>				
Debt limit—Increased for highway and bridge construction	Sec. 14, Art. IX Sec. 14, Art. XXXV	Sept. 1919	21,542	7,080
Highway and bridges—Bond issues increased from 2 to 10 million	Sec. 17, Art. IX, Art. XXXV	Sept. 1919	26,228	5,125
Militia—Officers to be appointed	Sec. 1, 2, 3, 4 and 5, Art. VII	Sept. 1919	15,826	11,020
Polling places—Legislature may authorize division of towns	Sec. 16, Art. IX	Sept. 1920	76,129	29,333
Public wharves—State indebtedness for, authorized	New sec. 18, Art. IX	Sept. 1920	22,637	6,777

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Voters—Residence qualification amended	Sec. 1, Art. II	Sept. 1920	22,024	6,751
Soldiers' bonus	New sec. 19, Art. IX	Sept. 1920	105,712	32,820
Income tax <i>Maryland</i>	Sec. 8, Art. IX	Sept. 1920	53,975	64,787
Legislature—Salary increase	Sec. 15, Art. III	Nov. 1920	76,367	116,762
Clerk of court—Salary increase <i>Massachusetts</i>	Sec. 37, Art. IV	Nov. 1920	58,081	127,638
New constitution <i>Michigan</i>		1919	263,359	64,978
Debt limit—Increased \$50,000,000 for highway improvements	Sec. 10, Art. X	April 1919	558,572	225,239
Judges—Supreme and probate courts—Salaries may be increased during term of office	Sec. 3, Art. XVI	April 1919	313,539	418,778
State officers—Salary of treasurer and auditor-general fixed by law	Sec. 21, Art. VI	Nov. 1920	348,311	463,959
Aliens—Electors—Must be naturalized	Sec. 1, Art. III	Nov. 1920	415,780	359,749
Absent voting—Privileges extended				
Labor—Hours and conditions of, for men regulated by legislature	Sec. 29, Art. V	Nov. 1920	420,085	413,362
Suffrage—Woman suffrage—Absent voters	Sec. 1, Art. III	Nov. 1920	415,780	359,749
Soldiers' bonus	New sec. 20, Art. X	April 1921	471,159	185,602
Prohibition—Repealing (Init.)	Sec. 11, Art. XVI	April 1919	322,603	530,123
Excess condemnation	New sec. 5, Art. XIII	Nov. 1920	360,668	439,373
School attendance—Compulsory between 5 and 16 years		Nov. 1920	353,817	610,699

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
<i>Minnesota</i>				
State highway system— Establishing, providing for maintenance by taxation of motor vehicles	New Art. xvi	Nov. 1920	526,936	199,603
Judges—Probate court— Term fixed at 4 years	Sec. 7, Art. vi	Nov. 1920	446,959	171,414
Taxation—Exemption of personal property—In- come tax established	Sec. 1, Art. ix	Nov. 1920	331,105 <sup>a</sup>	217,558
<i>Mississippi</i>				
Boards of supervisors— Jurisdiction over roads and ferries to be pre- scribed by legislature	Sec. 170, Art. vi	Nov. 1920	20,184	45,938
Levee commissioners— Election and term fixed	Sec. 231, Art. xi	Nov. 1920	32,236	26,743
Woman suffrage	Sec. 241, Art. xii	Nov. 1920	39,186	24,296
Poll tax—Uniform tax for male and female inhabitants	Sec. 243, Art. xii	Nov. 1920	41,693	22,733
Soldiers' pensions—Con- federate army	Sec. 272, Art. xii	Nov. 1920	42,442	19,542
<i>Missouri</i>				
Municipal charter	Sec. 16, 17, Art. ix	Nov. 2, 1920	385,656	311,922
Taxation—Road districts	New sec. 23, Art. x	Nov. 2, 1920	375,942	340,665
Highway bonds—Legisla- tive power to contract debt	New sec. 44a, Art. iv	Nov. 2, 1920	372,514	339,021
Debt—Limitation of county, city and civil subdivision	Sec. 12, Art. x	Nov. 2, 1920	368,651	329,938
Municipal utilities—Ice- plants—Debt limit in- creased	Sec. 12a, Art. x	Nov. 2, 1920	381,794	310,210
Blind — Pensions — Tax levy authorized	Sec. 47, Art. iv	Nov. 2, 1920	455,227	295,788

<sup>a</sup> Not adopted; majority of total vote at election (797, 945) required.

TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Soldiers' settlement fund Bond issue of \$1,000,000	New subdiv. 4, sec. 44, Art. iv	Nov. 2, 1920	379,156	348,749
Elections—Absent voting during military service	Sec. 11, Art. viii	Nov. 2, 1920	440,102	279,490
Legislature—Salary in- crease	Sec. 16, Art. iv	Nov. 1920	320,406	407,672
Taxation — Local — In- creased by vote of the people remain same until changed in like manner	Sec. 11, Art. x	Nov. 1920	312,323	398,279
Judges—Supreme court— Number increased from 7 to 9	Amendment 1890, Sec. 1, Art. vi	Nov. 1920	315,837	369,077
Judges—St. Louis—Court of appeals—Increased from 3 to 6 members	Sec. 13, Art. vi	Nov. 1920	316,661	355,401
Constitution — Providing for a new one. (Init.)		Nov. 1920	394,437	317,815
Soldiers' bonus	New sec. 44b, Art. iv	Aug. 1921	210,238	100,131
Women eligible to public office		Aug. 2, 1921	159,230	147,751
Road bond issue— Interest paid from mo- tor vehicle license fee	New sec. 44bc, Art. iv	Aug. 2, 1921	247,274	59,776
Constitutional conven- tion	Art. xv	Aug. 2, 1921	175,355	127,130
<i>Montana</i>				
School funds—95 per cent of interest and rents distributed to school districts 5 per cent to permanent fund	Sec. 5, Art. xi	Nov. 1920	77,093	54,184
Board of examiners created—Legislature authorized to create administrative depts.	Sec. 20, Art. vii	Nov. 1920	51,072	72,870
County boards of equali- zation of state tax com- mission—Created	Sec. 15, Art. xii	Nov. 1920	58,571	72,161

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Nebraska				
Aliens—Property rights regulated by law	Sec. 25, Art. I	Sept. 1920	65,921	15,223
English—Official language to be used in the schools	New sec. 27, Art. I	Sept. 1920	69,626	13,624
Initiative and referendum—Required number of signatures reduced	Sec. 2, 3, Art. III	Sept. 1920	56,046	19,734
Legislative apportionment—Separate district	Sec. 5, Art. III	Sept. 1920	59,494	20,082
Senators—Number increased from 33 to 50	Sec. 6, Art. III	Sept. 1920	41,063	38,738
Legislature—Increase of salary	Sec. 7, Art. III	Sept. 1920	56,333	19,753
Legislation—Conference report between houses adopted on majority vote of all members—Bills, 1st and 2d reading by title only	Sec. 13, 14, Art. III	Sept. 1920	52,473	17,414
Legislators—Appointment to state offices prohibited	Sec. 16, Art. III	Sept. 1920	63,575	14,503
Public officers—Salary increase during term of office prohibited	Sec. 19, Art. III	Sept. 1920	65,399	15,961
Mineral rights—Reserved in state lands	Sec. 20, Art. III	Sept. 1920	67,513	11,164
Legislative apportionment of 1875 eliminated	Art. IV (old const.)	Sept. 1920	58,835	12,820
Executive offices—Created by 2/3 vote of legislature	Sec. 27, Art. V	Sept. 1920	60,484	16,110
Tax commissioner—Office created	New sec. 28, Art. V.	Sept. 1920	58,136	17,796
Courts—Jurisdiction and procedure	Art. V	Sept. 1920	56,334	15,908
Laws declared unconstitutional—Concurrence of five judges necessary	Sec. 2, Art. V	Sept. 1920	65,142	12,444



TABLE I—*Continued*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Judges—Supreme court— Election by districts	Sec. 5, Art. XIX	Sept. 1920	56,912	21,353
Woman suffrage	Sec. 1, Art. VI	Sept. 1920	65,483	15,416
Soldier suffrage	Sec. 4, Art. VI	Sept. 1920	71,979	8,686
School fund	Sec. 4, Art. VII	Sept. 1920	66,040	11,861
School lands—Sale pro- hibited except at public auction	Sec. 8, Art. VII	Sept. 1920	66,543	14,403
University regents—Elec- tion by districts	Sec. 10, Art. VII	Sept. 1920	54,862	21,208
Sectarian institutions— State aid prohibited	Sec. 11, Art. VII	Sept. 1920	60,995	15,365
Industrial schools—Age for commitment to, raised from 16 to 18	Sec. 12, Art. VII	Sept. 1920	66,913	13,199
Normal schools—Board of education for	New sec. 13, Art. VII	Sept. 1920	59,024	17,084
Civil cases—Five-sixths jury verdict authorized	Sec. 6, Art. I	Sept. 1920	64,550	17,834
Taxation—Uniform taxes on tangible property— Classification of other property	Sec. 1, Art. VIII	Sept. 1920	59,105	15,561
Tax exemptions—House- hold goods—Forestry exemptions changed	Sec. 2, Art. VIII	Sept. 1920	69,903	12,591
County tax limit \$.50	Sec. 5, Art. VIII	Sept. 1920	63,463	14,692
County consolidations— Indebtedness	Sec. 3, Art. IX	Sept. 1920	55,539	17,365
Public utilities—Report to railway commission	Sec. 1, Art. X	Sept. 1920	61,776	12,987
Public utility corpora- tions—Competing, may not consolidate with- out permission of rail- way commission	Sec. 3, Art. X	Sept. 1920	59,071	15,542
Public utility corpora- tions—Stocks and div- idends regulated	Sec. 5, Art. X	Sept. 1920	62,082	11,028
Home rule charters	New sec. 5, Art. XI	Sept. 1920	58,582	13,456

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Corporations—Coöperative—Foreign corporations—Regulated	Sec. 1, Art. XII	Sept. 1920	64,443	9,701
Water—Priority rights	Sec. 5, 6, Art. xv	Sept. 1920	64,353	9,444
Water power—Public rights	Sec. 7, Art. xv	Sept. 1920	69,861	7,377
Woman and child labor—Regulation of and minimum wage	Sec. 8, Art. xv	Sept. 1920	68,013	10,318
Industrial commission—Creation	Sec. 9, Art. xv	Sept. 1920	57,504	21,473
Constitutional amendments—35 per cent of total vote cast necessary for adoption	Sec. 1, Art. xvi	Sept. 1920	60,244	14,655
State officers—Salaries fixed	Sec. 3, Art. xvii	Sept. 1920	61,393	15,510
Constitution—Continuing schedule	Art. xvii	Sept. 1920	54,694	14,262
<i>Nevada</i>				
Supreme court—Justices—Governor authorized to fill vacancies	Sec. 4, Art. vi			
Fiscal year—Beginning changed from January 1 to July 1	Sec. 1, Art. ix			
Legislature—Power limited re local legislation	Sec. 20, Art. iv			
<i>New Mexico</i>				
Highway bonds—Legislature authorized to issue	Sec. 8, Art. ix	Sept. 1919	1,731	9,907
Board of control	Sec. 3, Art. xiv Sec. 13, Art. xii	Sept. 1919	927	10,702
Absent voting	New sec. 6, Art. vii	Nov. 1920	6,742	5,069
Women—Eligible to public office	Sec. 2, Art. vii	Sept. 1921	26,744	19,751
Aliens—Property rights—Aliens ineligible to citizenship under U. S. laws cannot acquire leasehold to real estate	Sec. 22, Art. ii	Sept. 1921	25,921	18,342

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
State superintendent of public instruction—Eligible for office for more than 2 terms	Sec. 1, Art. v	Sept. 1921	16,583	25,072
Soldiers and sailors—Property tax exemption in sum of \$2000	Sec. 5, Art. VIII	Sept. 1921	24,216	22,946
Corporation commission—Powers may be enlarged or altered by the legislature—Making orders of commission binding and to be enforced by supreme court—Burden of proof placed upon carrier, company or person to whom order is directed	New sec. 19, Art. XI	Sept. 1921	16,806	23,644
Governor—Date of taking office changed from January 1 to December 1	Sec. 3, Art. XX	Sept. 1921	18,866	21,458
Legislature—Date of convening fixed for first Tuesday in February—Requiring departments to make financial reports—Budget report—Regulating action on appropriation bills	New subsec. a-1, sec. 5, Art. IV			
Public lands—Creating a state land commission	Art. XIII	Sept. 1921	14,727	26,438
Taxation—Rate for all state purposes lowered from 10 to 6 mills—Rate for county purposes 5 mills—State highway tax of 2 mills—School tax for general county school purposes 10 mills—Municipal tax not to exceed 5 mills	Sec. 2, Art. VIII	Sept. 1921	12,696	36,695

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Debt—Authorizing special elections for citizens of municipalities to vote upon question of	Sec. 12, Art. IX	Sept. 1921	16,497	22,636
Schools—County superintendent may serve more than 2 successive terms	Sec. 2, Art. X	Sept. 1921	17,996	22,603
Highway bonds—Authorizing issue without submitting question to the electors	New sec. 16, Art. IX	Sept. 1921	29,267	21,259
<i>New York</i>				
Swamp lands—Assessments for drainage	Sec. 7, Art. I	Nov. 1919	718,497	590,235
Absent voting	New sec. 1a, Art. II	Nov. 1919	791,860	534,452
Legislature—Salary increase—Senators' salary increased to \$3500	Sec. 6, Art. III	Nov. 1919	625,897	680,945
Judges—Court of appeals—Salary increase	Sec. 7, Art. VI	Nov. 1919	608,244	690,131
State debts	Sec. 2, 4, 5, 11, 12, Art. VII	Nov. 1920	1,117,546	630,265
Electors—Qualifications—Ability to read and write English	Sec. 1, Art. II	Nov. 1921	891,590	627,042
Legislature—Salary increase	Sec. 6, Art. III	Nov. 1921	542,094	1,003,938
County government—Westchester and Nassau counties—Legislature to provide forms	Sec. 7, Art. III	Nov. 1921	645,249	631,355
Soldiers, sailors and marines—Preference in employment to those having served U. S. in time of war	Sec. 9, Art. V	Nov. 1921	699,373	1,101,905
Courts—Children's and domestic relations' courts—Establishment and jurisdiction	Sec. 18, Art. VI	Nov. 1921	906,747	527,056

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Erie canal—Portion in Herkimer County exempt from constitutional provisions	Sec. 8, Art. VII	Nov. 1921	779,763	538,104
Erie canal—Portion between Rome and Mohawk exempt from constitutional provision	Sec. 8, Art. VII	Nov. 1921	743,465	535,726
<i>North Carolina</i> Income tax—Rate fixed	Sec. 3, Art. v	1920) Voted on as	262,873	81,109
Poll tax—Rate fixed	Sec. 1, Art. v	1920) one amend-		
Tax limit—State and county limited to \$.66½	Sec. 6, Art. v	1920) ment		
Electors—Qualifications—Length of residence in state changed from 2 to 1 year	Sec. 2, Art. VI	1920) Voted on as	235,608	83,366
Poll tax—Repealing requirements to pay	Sec. 4, Art. VI	1920) one amend-		
<i>North Dakota</i> Recall		Mar. 16, 1920	29,262	17,255
Coal lands—Leasing for agricultural purposes	Sec. 161, Art. IX	Mar. 16, 1920	31,579	14,153
Debt limits—School districts may increase upon majority vote	Sec. 183, Art. XII	Mar. 16, 1920	24,869	18,923
Elections—Residence requirements	Sec. 121, Art. v	Mar. 16, 1920	31,082	16,366
Woman suffrage	Sec. 121, Art. v	Nov. 2, 1920	135,370	60,772
Reformatories—Change of name	Sec. 215, Art. XIX	Nov. 2, 1920	129,628	63,569
School funds—Investing in bonds of other states prohibited	Sec. 162, Art. IX	Nov. 2, 1920	124,431	56,526
<i>Ohio</i> Taxation—Classified property tax	Sec. 2, Art. XII	Nov. 1919	439,897	517,245
Prohibition—State wide	Sec. 9, Art. XV	Nov. 1919	454,933	496,786

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Intoxicating liquors—Defining	Sec. 9-1, Art. xv	Nov. 1919	474,907	504,688
Women—May hold office of notary public <i>Oklahoma</i> <sup>a</sup>	Sec. 4, Art. xv	Nov. 1920		
Highway building—Authorizing the legislature to issue bonds	Sec. 25a, Art. x	May 1919	69,917	151,327
Legislative session—Fixing the length and compensation	Sec. 21, Art. v	1920	125,463	173,274
Insurance companies—Taxation of companies insuring minor children	Sec. 3, Art. xix	1920	157,064	159,919
Public service corporations in more than one county (Init.)	Art. xiii	1920		
Taxation—Corporation tax for schools	Sec. 12a, Art. x	Nov. 1920	162,749	179,271
Taxation—Levy of 6-10 mills for schools <i>Oregon</i>	New sec. 9-A, Art. x	Nov. 1920	169,639	188,574
Irrigation and drainage district bonds—State authorized to pay interest for first five years	New Art. xi-b	June 1919	43,010	35,945
Lieutenant governor—Providing for election of	Sec. 1, 8, Art. v	June 1919	32,653	46,861
Industrial and reconstruction hospitals—Location fixed	Sec. 3, Art. xiv	June 1919	38,204	40,707
Highways—County debt limit fixed at 6 per cent	Sec. 10, Art. xi	June 1919	49,728	33,561
Soldiers and sailors—Land settlements—Bond issues for	New sec. 7a Art. xi	June 1919	39,130	40,580
Compulsory voting	Sec. 2, Art. ii	Nov. 1920	61,258	131,603
Legislature—Fixing the length of the session and the compensation of members	Sec. 29, Art. iv	Nov. 1920	80,342	85,524

<sup>a</sup> Votes necessary to adopt, 244,584.

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Single tax (Init.)	Sec. 1, Art. ix	Nov. 1920	37,283	147,426
Vaccination—Anti-compulsory (Init.)	New sec. 9, Art. xv	Nov. 1920	63,018	127,570
Interest—Legal rate fixed	New sec. 9, Art. ix	Nov. 1920	28,976	158,673
Legislature—Divided session (Init.)	Sec. 10, Art. iv	Nov. 1920	57,791	101,179
Highways—Eminent domain extended over	Sec. 18, Art. i	May 1920	100,256	35,655
Highways—4 per cent debt limitation allowed for maintenance	Sec. 7, Art. xi	May 1920	93,392	46,084
Capital punishment restored	Sec. 36, Art. i repealed. New sec. 37, 38, Art. i	May 1920	81,756	64,589
Debt limit of 2 per cent allowed in Crook and Curry counties	Sec. 10, Art. xi	May 1920	72,378	36,699
Governor—Succession to office in case of death or disability	Sec. 8, Art. v	May 1920	78,241	56,946
County officers' terms increased to four years (Init.)	Sec. 6, Art. vi	Nov. 1920	97,854	80,983
Soldiers' bonus	New Art. xic	June 1921	88,219	37,866
Veto power—Extended to include single items in appropriation bills and emergency clause without affecting other provisions	Sec. 15a, Art. v	June 1921	62,621	45,537
Legislature—Increase of salary—Introduction of bills regulated	Sec. 29, Art. iv	June 1921	42,924	72,596
<i>Pennsylvania</i>				
Banks and trust companies—Legislature may provide for the incorporation of	Sec. 11, Art. xvi	Nov. 1920	431,122	142,262

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Philadelphia—Debt limit increased	Sec. 8, Art. ix	Nov. 1920	373,643	144,512
<i>South Carolina</i>				
Debt limit—Exempting town of Allendale for purpose of improvements	Sec. 7, Art. viii; Sec. 5, Art. x	Nov. 1920	8,161	2,892
County officers—Compensation—Repealing	Subsec. 10, sec. 34, Art. iii	Nov. 1920	7,562	5,486
Ice plants—Municipal—Authorized	New sec. 13, Art. viii	Nov. 1920	8,410	2,941
Ice plants—Municipal—Authorized	Sec. 5, Art. viii	Nov. 1920	8,366	2,925
Debt limit—Exempting county of Sumter	Sec. 5, Art. x	Nov. 1920	8,185	2,950
Debt limit—Exempting city of Charleston for land and waterway improvements	Sec. 7, Art. viii Sec. 5, Art. x	Nov. 1920	8,177	2,934
Debt limit—Exempting city of Camden	Sec. 7, Art. viii Sec. 5, Art. x	Nov. 1920	8,174	2,931
Debt limit—Exempting city of Union for purpose of paying debts	Sec. 7, Art. viii	Nov. 1920	8,119	2,912
Debt limit—Exempting Bennettsville for purpose of improvements	Sec. 7, Art. viii	Nov. 1920	8,202	2,982
Debt limit—Exempting Cross Keys and other townships of Union County for highway and bridge improvements	Sec. 7, Art. viii Sec. 5, Art. x	Nov. 1920	8,095	2,971
Debt limit—Exempting city of Chester for pose of improvements	Sec. 7, Art. viii Sec. 5, Art. x	Nov. 1920	4,305	909
Debt limit—Fixed at 15 per cent in counties of Allendale and McCormick	Sec. 5, Art. x	Nov. 1920	8,199	2,898



TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Debt limit—Exempting county of Richland for purpose of improvements	Sec. 7, Art. VIII; Sec. 5, 6, Art. x	Nov. 1920	8,177	2,852
Debt limit—Exempting Laurens County	Sec. 5, Art. x	Nov. 1920	8,123	2,818
Debt limit—Exemption of Newberry for street improvements	Sec. 7, Art. VIII	Nov. 1920	8,231	2,827
Debt limit—Exempting Saluda and Kingstree	Sec. 5, Art. x	Nov. 1920	8,204	2,978
Debt limit—Exempting Charleston for purpose of improvements	Sec. 7, Art. VIII	Nov. 1920	8,341	2,864
Debt limit—Exempting Lancaster school district	Sec. 5, Art. x	Nov. 1920	8,145	2,830
Debt limit—Exempting Charleston school district	Sec. 5, Art. x	Nov. 1920	8,083	2,812
Debt limit—School districts—Town of Laurens limited to 12 per cent	Sec. 5, Art. x	1920	8,184	2,840
Debt limit—Charleston	Sec. 7, Art. VIII	1920	8,276	2,881
Debt limit—Santee Bridge district	Sec. 5, Art. x	1920	8,328	2,893
Debt limit—Laurens city increased	Sec. 7, Art. VIII	1920	8,257	2,897
Debt limit—Hartsville exempt from restrictions	Sec. 7, Art. VIII	1920	8,208	3,020
Debt limit—Exempting Chesterfield from restrictions	Sec. 5, Art. x	1920	8,184	2,824
Debt limit—School district, Hunter, no. 5, Laurens County	Sec. 7, Art. VIII	1920	8,170	2,898
Debt limit—Exempting Marion for purpose of improvements	Sec. 5, Art. x	1920	8,163	2,853

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Debt limit—Exempting Bishopville for purpose of improvements	Sec. 7, Art. VIII	1920	8,148	2,877
Debt limit—Exempting Bennettsville	Sec. 7, Art. VIII	Nov. 1920	8,155	2,807
Debt limit—City of Abbeville	Sec. 7, Art. VIII	Nov. 1920		
Fiscal year—Beginning changed to July 1	Sec. 10, Art. x	Nov. 1920	8,829	3,189
School districts—Saluda County	Sec. 5, Art. xi	Nov. 1920	8,213	2,852
Taxation—Abutting property may be assessed for permanent improvement of highways	New sec. 13a, Art. x	Nov. 1920	8,356	3,640
Taxation for improvements — Florence County	New sec. 20, Art. x	Nov. 1920	8,098	3,026
Taxation — Pendleton (town) may assess abutting property for improvements	New sec. 16, Art. x	Nov. 1920		
<i>South Dakota</i>				
Debt limit—School districts may exceed for educational purposes	Sec. 4, Art. XIII	Nov. 1920	66,734	72,226
Home building credit system	New sec. 17, Art. XIII	Nov. 1920	80,062	61,674
Soldiers' bonus	New sec. 18, Art. XIII	Nov. 1920	93,459	56,366
Board of control created	New sec. 4, Art. XIV	Nov. 1920	60,763	77,285
State officers — Salaries fixed by legislature	Sec. 2, Art. XXI	Nov. 1920	70,831	77,987
<i>Tennessee</i>				
Constitutional convention		Sept. 1919		
<i>Texas</i>				
Prohibition	Sec. 20, Art. XVI	May 1919	158,982	138,907
Woman suffrage	Sec. 2, Art. VI	May 1919	140,911	165,940

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Governor—Salary increased from \$4000 to \$10,000	Sec. 5, Art. iv	May 1919	108,803	195,570
Galveston—Bond issue authorized for grade raising purposes	Art. xvi	Nov. 1919	55,600	56,911
State university—Separation of agricultural and mechanical college	Sec. 10-15, Art. vii	Nov. 1919	37,560	76,422
Highways—State bond issue not to exceed \$75,000,000	Sec. 49, Art. iii	Nov. 1919	29,844	84,518
Pensions—Confederate soldiers and sailors and their widows	Sec. 51, Art. iii	Nov. 1919	56,886	59,701
State Prison—50 per cent of profits arising from operation of, to be distributed to the prisoners or their families	New sec. 60, Art. xvi	Nov. 1919	42,358	70,901
Debt limit—Increased for public improvements	Sec. 9, Art. viii	Nov. 1919	30,214	83,285
Home credits—State authorized to aid farmers to purchase home	Sec. 5, Art. iii	May 1919	150,813	151,782
Constitutional convention		Nov. 1919	23,549	71,376
Taxation—School districts	Sec. 3, Art. vii	Nov. 1920	221,223	126,282
Public officials—Compensation to be fixed by legislature—Abolishing fee system	New sec. 60, Art. xvi	Nov. 1920	149,324	164,603
Taxation—Municipal corporations—Limited to 1½ per cent	Sec. 4, Art. xi	Nov. 1920	173,920	146,031
State officers—Salary increase	Sec. 5, 21, 22, 23, Art. iv	July 1921	25,778	68,223
Legislature—Increase of per diem	Sec. 24, Art. iii	July 1921	24,424	85,487
Soldiers' pensions—Tax increase	Sec. 51, Art. iii	July 1921	49,852	61,568
Electors must be citizens	Sec. 2, Art. vi	July 1921	57,622	53,910

TABLE I—Continued

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Prison commissioners abolished — Legislature to regulate system by law	Sec. 58, Art. XVI	July 1921	39,659	71,880
<i>Utah</i>				
Debt limitation—Increased from 1½ to 2 per cent	Sec. 1, Art. XIV	Nov. 1920	15,142	33,417
Taxation—Fixing rate for state purposes	Sec. 7, Art. XIII	Nov. 1920	43,552	31,165
Charters—Conferring more power upon municipal corporations	Sec. 5, Art. XI	Nov. 1920	22,757	27,656
Rights of action to recover damages for injuries	Sec. 5, Art. XVI	Nov. 1920	26,288	24,821
<i>Virginia</i>				
School trustee—Women eligible	Sec. 133, Art. IX	Nov. 1920	112,429	43,121
Education—Compulsory for all children	Sec. 138, Art. IX	Nov. 1920	116,677	41,066
Debts—State may contract for highway construction	Sec. 184, Art. XIII	Nov. 1920	111,309	48,948
Municipal offices—Residence requirements need not apply to certain positions	Sec. 32, Art. II	Nov. 1920	105,690	40,623
Municipal government—Legislatures	Sec. 117, Art. VIII	Nov. 1920	103,356	40,561
School tax—Rate of levy to be fixed by law	Sec. 136, Art. IX	Nov. 1920	111,540	44,581
<i>Washington</i>				
Eminent domain—Land reclamation and settlement purposes	Sec. 16, Art. I	Nov. 1920	121,022	113,287
State officials—Salaries	Sec. 14, 16, 17, 19, 20, 21 and 22, Art. III	Nov. 1920	71,284	170,242
<i>West Virginia</i>				
State highway system—Providing bond issue		1920	248,689	130,569

TABLE I—*Concluded*

SUBJECT	ARTICLE AND SECTION	SUBMITTED	VOTE	
			Yes	No
Legislature—Divided session—Compensation of members provided <i>Wisconsin</i>	Sec. 22, 23, Art. vi	1920	160,929	122,744
Courts—Circuits may be decreased by legislature—Judges—One or more to a circuit	Sec. 6, 7, Art. vii	April 1920	113,786	116,436
Legislature—Compensation of members to be fixed by law <i>Wyoming</i>	Sec. 21, Art. iv	April 1920	126,243	132,258
Taxation—Live stock—Funds for stock inspection	New sec. 15, Art. xv	1920	21,523 <sup>7</sup>	18,701
Tax rate—Cities may increase from 8 to 15 mills	Sec. 6, Art. xv	1920	18,893	21,661
School districts may increase debt limit for purpose of creating school buildings	Sec. 5, Art. xvi	1920	36,721	12,178
Debt limit—State may increase for purpose of highway construction	Sec. 1, Art. xvi	1920	28,504	15,393
County debt limit—Increased from 4 to 7 per cent	Sec. 3, Art. xvi	1920	28,393	14,727
Highways—State debt for, limited	Sec. 2, Art. xvi	1920	24,464	16,698

<sup>7</sup> Votes necessary to adopt, 30,326.

TABLE II—PENDING AMENDMENTS

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
<i>Arizona</i>		
Debts—State bonds for land reclamation	Sec. 5, Art. ix	Gen. Elec. Nov. 1922
Debts—Limitation of state debt to 40 per cent—Bond issues submitted to electors	Sec. 5, Art. ix	Gen. Elec. Nov. 1922
Education—Establishing a state board	Art. xi	Gen. Elec. Nov. 1922
<i>California</i>		
Charters—Borough powers abolished only upon consent of electors	Sec. 8, Art. xi	
Cities—Consolidation can take place only with consent of electors	New sec. 7½b, Art. xi	
Justices—Supreme court and district courts of appeal—Salaries to be paid by state	Sec. 17, Art. vi	
Contracts—Municipalities authorized to enter into	New sec. 20, Art. xi	
Taxation—Fixing the rate on notes, bonds, stocks, etc.	New sec. 12½, Art. xiii	
School districts—Joint—Establishing and providing for bond issues	New sec. 6½, Art. ix	
Judges pro tempore—Approval of court	Sec. 8, Art. vi	
Taxation—Interurban railway and bus lines—Fixing rates	Sec. 14, Art. xiii	
Legislation—Special laws re reclamation districts	New sec. 25a, Art. iv	
Suffrage—Absent voters	Sec. 1, Art. ii	
Insurance policies—Legislature to classify counties for regulating issuance	New sec. 5½, Art. xii	
Taxation—Exemption—Property of war veterans	Sec. 1½, Art. xiii	
Public moneys—Regulating deposit	Sec. 16½, Art. xi	
Water power—State or municipal corporations authorized to control streams	New sec. 19a, Art. xi	
<i>Colorado</i>		
Aliens—Property rights to be provided by law	Sec. 27, Art. ii	Nov. 1922
County officials—Term extended to four years—General assembly authorized to create offices	Sec. 8, Art. xiv	Nov. 1922

TABLE II—Continued

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
State university—Regents may establish and control departments of medicine, dentistry, etc.	Sec. 5, Art. VIII	Nov. 1922
State officers—Term increased to four years	Sec. 1, Art. IV	Nov. 1922
<i>Connecticut</i>		
Judges and justices of peace—Limiting age of service to 75 years	Sec. 3, Art. V	To legislature, 1923
Veto power—Extended to include single items of appropriation bills	Sec. 12, Art. IV	To legislature, 1923
<i>Delaware</i>		
Taxation—Women subject to poll tax	Sec. 5, Art. VIII	Gen. Elec. 1922
Public offices open to women	New sec. 10, Art. XV	Gen. Elec. 1922
<i>Georgia</i>		
Senatorial Districts—Increase in number from 51 to 52	Par. 1, sec. 2, Art. III	1922
<i>Michigan</i>		
Excess condemnation for parks, etc.	New sec. 5, Art. XIII	Nov. 1922
Ports incorporated	New sec. 30, Art. VIII	Nov. 1922
Income tax law	Sec. 3, Art. X	Nov. 1922
<i>Minnesota</i>		
Rural credits—State authorized to establish	Sec. 10, Art. IX	Nov. 1922
Occupation tax—State may levy on all industries	New sec. 1 a, Art. IX	Nov. 1922
<i>Missouri</i>		
Woman suffrage	Sec. 2, Art. VIII	Nov. 1922
Legislature—Salary increase	Sec. 16, Art. IV	Nov. 1922
Highway bonds—Legislative power to contract debts	Sec. 44a, Art. IV	Nov. 1922
<i>Montana</i>		
Equalization boards—County and state created	Sec. 15, Art. XII	Nov. 1922
County and municipal government—Form to be prescribed by legislature	New sec. 7, Art. XVI	Nov. 1922
<i>Nevada</i>		
Charters—Legislature may authorize cities to frame and adopt a charter	Sec. 8, Art. VIII	

TABLE II—Continued

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
Justice of peace and constables—compensation fixed by legislature	Sec. 20, Art. iv	
Aliens—Rights repealed	Sec. 16, Art. i (repealed)	
Legislature—Vacancies filled by appointments made by county commissioner <i>New York</i>	Sec. 12, Art. iv	
Absent voting	Sec. 1 a, Art. ii	To next legislature 1921
Notary public—Legislators eligible to office of	Sec. 7, Art. iii	To next legislature 1921
State officers—Providing for their election, term, duties, etc.	Art. v	To next legislature 1921
State officers	Art. v	To next legislature 1921
State officers	Art. v	To next legislature 1921
Forest preserve—legislature may provide by law for development of water power and electric transmission lines	Sec. 7, Art. vii	To next legislature 1921
Taxation—Appropriations for educational purposes exempt from constitutional provision	Sec. 10, Art. viii	
Boards of charities and corrections created	Sec. 11, Art. viii	To next legislature 1921
Municipal legislation—Mayor must return bill to clerk of house	Sec. 2, Art. xii	To next legislature 1921
Judges—Court of appeals salary fixed	Sec. 7, Art. vi	To people 1922
Governor—Allowed 40 days to sign local bills	Sec. 9, Art. iv	To legislature 1923
<i>North Carolina</i>		
Legislature—Increased pay	Sec. 28, Art. ii	Nov. 1922
<i>North Dakota</i>		
Legislature—Increased pay	Sec. 45, Art. ii	
Judges in certain counties to act as clerk of district court	Sec. 173, Art. x	
Elections—Residence requirements	Sec. 121, Art. v	June 1922
<i>Oklahoma</i>		
Taxation—Increase from 31½ mills to 41½	Sec. 9, Art. x	Spec. Elec.
<i>Pennsylvania</i>		
Statutes—Amendment of—Subject must be expressed in the title	Sec. 6, Art. iii	Legislature 1921
Classification of political subdivisions	New sec. 34, Art. iii	People Nov. 1922



TABLE II—Continued

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
Woman suffrage	Sec. 1, Art. VIII	People Nov. 1922
Charters—Cities may frame and adopt— Local laws must be submitted to electors	Sec. 1, Art. xv	People Nov. 1922
Philadelphia—Authorized to take stock in transit companies	Sec. 7, Art. ix	People Nov. 1922
Philadelphia County—courts of common pleas consolidated	Sec. 6, Art. v	People Nov. 1922
Railroads—Passes for clergymen	Sec. 8, Art. xvii	Legislature 1923
Soldiers' bonus—Authorizing state to issue bonds to amount of \$35,000,000	Sec. 4, Art. ix	Nov. 1924
Highways—Increasing bond issue from \$50,000,000 to \$100,000,000	Sec. 4, Art. ix	Legislature 1923
Sheriffs—In counties of less than 50,000 may succeed themselves in office	Sec. 1, Art. xiv	Legislature 1923
Taxation exemption—Real and personal property of war organizations	Sec. 1, Art. ix	Legislature 1923
Taxation—Classification, exemption in case of inheritance and incomes	Sec. 1, Art. ix	Legislature 1923
<i>South Carolina</i>		
Taxation—town of Greer authorized to assess property for improvements	New sec. Art. x	Gen. Elec. 1922
<i>South Dakota</i>		
Initiative—15 per cent of electors re- quired	Sec. 1, Art. iii	Nov. 1922
County organization—Authorizing the legislature to provide for by law	Sec. 1, Art. ix	Nov. 1922
Taxation—State may tax contiguous property for improvements	Sec. 10, Art. xi	Nov. 1922
State officers—Compensation to be fixed by legislature	Sec. 2, Art. xxi	Nov. 1922
<i>Tennessee</i>		
Taxation—Legislature given full power over	Subsec. 1, sec. 28, Art. ii (repealed)	Nov. 1922
<i>Utah</i>		
Debt limit—Increasing to 20 per cent	Sec. 1, Art. xiv	Nov. 1922
Taxation—Classification	Sec. 2, 3, Art. xiii	Nov. 1922
Legislature—Increasing pay	Sec. 9, Art. vi	Nov. 1922
<i>Vermont</i>		
Woman suffrage	Sec. 34, ch. 2.	To next legisla- ture

TABLE II—Continued

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
Legislature—General Assembly authorized to fill vacancies caused by death, etc.	Sec. 13, ch. 2	To next legislature
Jury trial—Waiver in some cases	Art. x, ch. 1	To next legislature
Age of legal majority—21 for men and women	Art. 1, ch. 1	To next legislature
<i>Virginia</i>		
Woman Suffrage	Sec. 18, 20, 21, 173	Next legislature 1922
Taxation—Abutting property owners pay for certain improvements in certain cities	Sec. 170, Art. XIII	Next legislature 1922
Board of Education—Duties to be prescribed by law	Sec. 132, Art. ix	Next legislature 1922
<i>Washington</i>		
Criminal districts—routes of railways and boats included	Sec. 22, Art. i	Nov. 1922
Appropriations—payments must be made within one month after end of fiscal year	Sec. 4, Art. viii	Nov. 1922
Legislature—compensation of members increased	Sec. 23, Art. ii	Nov. 1922
<i>Wisconsin</i>		
Sheriffs may succeed themselves in office	Sec. 4, Art. vi	Nov. 1922
Municipal improvements—Cities may increase their debt limit 5 per cent	New sec. 3b, Art. xi	Nov. 1922
Governor—Salary to be fixed by law	Sec. 5, Art. v	Nov. 1922
Highways—State debt created for construction of	Sec. 9, Art. viii	
Lieutenant Governor—Salary fixed by law	Sec. 9, Art. v	
Municipal self-government	Sec. 3, Art. xi	Nov. 1922
Court procedure—Verdict in civil cases based upon certain number of jury votes	Sec. 5, Art. i	Nov. 1922
Land settlement—State aid—State may borrow money not to exceed 1/5 of a mill	Sec. 7, Art. viii	Legislature 1923
Legislature—Increasing compensation of members from \$500 to \$750	Sec. 21, Art. iv	To legislature 1923

TABLE II—*Concluded*

SUBJECT	ARTICLE AND SECTION	WHEN TO BE SUBMITTED
Courts—Circuit judges—One for each circuit (except in counties having population in excess of 85,000)	Sec. 7, Art. VII	To legislature 1923
Municipal corporations—Home Rule	Sec. 3, Art. XI	To people Nov. 1922
Forests—State may appropriate money not to exceed $\frac{1}{16}$ of a mill in any one year for preservation and development of	Sec. 10, Art. VIII	To legislature 1923
<i>Wyoming</i> Salary limits of certain county officers fixed	Sec. 3, Art. XIV	Nov. 1922
Boards of Land Commissioners consolidated	Sec. 13, Art. VII Sec. 3, Art. XVIII	Nov. 1922

**Governors' Messages, 1922.** In the "off" year the legislatures of eleven states regularly meet. The messages of the governors of these states have been examined with the exception of those of Louisiana and Georgia, where the lawmakers assemble in May and June respectively, and that of the retiring governor in Virginia. The messages of newly-elected Governors Hardwick and Morgan, of Georgia and West Virginia, respectively, delivered in July and March of last year are included. Special sessions have been held in at least two states, Nebraska and North Carolina. The message of the latter chief executive could not be obtained. The reading of the messages brings to light nothing of unusual interest. In fact, no striking common characteristic is discovered unless it be their stereotyped or ordinary nature. It is difficult to determine with satisfactory accuracy the relative attention devoted to various subjects in the messages as a whole. One might attempt a sort of mathematical calculation by measuring the page-inches or counting the lines or words, but this would hardly prove profitable. A consideration of the number of governors who mention a subject, in connection with the approximate amount of space devoted to it, will roughly indicate the average estimate of its importance.

As might be expected, taxation and expenditures are the subjects most frequently discussed. The governors of Mississippi, Georgia and South Carolina are especially panicky regarding the state expenses. Governor Cooper of South Carolina returns to his attack of last year

on the general property tax and urges its total abolition as a source of state revenue, proposing the substitution of taxes on incomes, inheritances, petroleum products, occupations and privileges, luxuries, and hydro-electric power, and urging again a constitutional amendment permitting the classification of property for purposes of taxation. Georgia's governor intimates that the ad valorem property tax has broken down, and he would abandon such a tax to the city, substituting a graduated income tax through constitutional amendment. He would also equalize in one field the status of male and female by levying a poll tax on the new women voters. The governors of New York and Rhode Island believe that sources of state revenue other than the general property tax will keep pace with the needs of the states. Kentucky and West Virginia executives direct attention to the failure of the assessment of property for the general direct tax and call for measures of improvement especially on coal lands valuation, in the former state. The governor of Mississippi calls the privilege tax an awkward make-shift in raising revenue when the tax upon property is required by the constitution to be "uniform," and points out the inequality of basing the merchants' taxes on the values of their stocks and of taking from all lawyers an equal amount. In West Virginia and Georgia the limit of direct property taxation is asserted to have been revoked. The governors of Virginia, Nebraska, South Carolina, Mississippi, New Jersey, Georgia and Maryland recommend a tax on gasoline usually for road building and maintenance purposes. It is a favorite plea of several governors that the state takes a relatively small part of each dollar of tax money in comparison with the units of local government. Governor Trinkle of Virginia asserts that the local tax is three times the state tax, while the state returns to eighty-three of its hundred counties more than they pay. His concern over the laxity of county administration causes him to suggest the study of a county-manager plan as a substitute for the supervisor form of county government. He urges increased state supervision and an audit of local accounts by the state accountant at least once in ten years. He also advises the decrease in the tax rate on bonds and notes from \$1.10, to \$.50 per \$100. While Governor Trinkle notes the undesirability of levying a tax for a specific purpose, the governor of Mississippi would put the universities and colleges on a millage basis to free them from the constant dread of lack of funds.

Governor Miller of New York proposes an inquiry into the causes of the excessive costs of local government, as does Governor Cox of

Massachusetts, and at the same time announces a reduction of the direct state tax by twelve millions. Nebraska affords a striking instance of reduction: "The primary purpose for which the special session is called is to reduce the appropriations of the last regular session. Reductions in the property tax total \$2,735,805.85. This will enable the State Board of Equalization to reduce the general fund levy 40 per cent this year," begins Governor McKelvie's message to the special session, which carried out his request to the extent of over \$2,000,000. Governor Cox calls attention to the reduction last year in the amount of interest paid on loans in anticipation of taxes from \$200,000 to \$8000, which was accomplished by new methods of placing the state deposits and requiring the deposit of department funds with the state treasurer. Governor Miller notes a saving of \$300,000 in prospect through the elimination of unnecessary printing generally and superfluous matter in state reports especially. He suggests that the board of estimate and control break up the printing work so that competitive bids may be more readily made and asks that the state institutions do more of the state's printing.

Mississippi's governor favors the reduction of the salaries of county officers, claiming that many are more highly paid than the leading state officials. He urges fixed salary payment instead of fee payment, and thinks the tax assessor should be the most highly paid official. Kentucky's governor calls for the enforcement against county officers of the state constitutional provision that no public officer except the governor shall receive over \$5000 a year for his services. The governors of Virginia, Massachusetts, New York and Mississippi would establish new, or improve existing central purchasing agencies. Governor Miller pointed out that the three institutional groups, as well as the departments, use each its own methods. Forty-seven standard commodities purchased during the year actually cost \$317,793.54 more than if all had been purchased at the minimum price paid. In connection with the department of purchasing and supply as created, he thinks there should be an independent committee representative of each of the institutional groups, to prescribe standards and specifications.

The budget is becoming less of a political asset each year, and governors are compelled to talk results rather than simply denounce extravagance. In Kentucky, New York, Mississippi, Maryland, Virginia, Nebraska and Massachusetts, reference to the budget is made, crediting it with a large measure of successful operation, except in Mississippi, where only a sort of tentative scheme has been established,

adequate to show the advantage of careful analysis of public appropriations. Governor Miller advises a budget of two parts: one for current expenses and one for capital expenditures. He thinks the former can be shaped by assisting agencies so as to require little legislative attention, while the latter involves large questions of policy demanding ample consideration. The governor of Maryland submitted the budget and budget bill at the opening of the session instead of taking advantage of the twenty day period allowed by the constitution. Governor Trinkle urged legislators to bring speedily all departments and state institutions within the budget system and to compel all funds to go through the treasury. Governor Cox admits the impossibility of a satisfactory deflated budget in view of the state laws requiring various permanent expenditures.

Administrative reorganization receives continued attention. Kentucky's governor asks an appropriation to enable him to make a business survey of the state departments. Governor Miller forecasts the recommendations to be made as a result of surveys instituted by the board of estimate and control and advises lump-sum appropriations in recommended cases so that department heads may effect the suggested reorganizations. He would amend the constitution to permit the legislators to consolidate the department of public works, state engineer and surveyor's office department of highways, the state architect's office and the department of public buildings. Georgia's governor became eloquent. "During the war period a spirit of hysteria, a spirit of over-regulation, is equally inevitable, and growing out of this spirit, created by both the state and federal legislation, 'Boards,' 'Bureaus,' and 'commissions' infest the land. They constitute another Egyptian plague; they seek to regulate almost every activity of life. Most of these boards must go." He notes that the budget investigation commission reports 277 trustees in the university system alone and recommends a small board of regents instead; as well as a single board of control for state institutions. Governor Ritchie of Maryland urges the grouping of the present eighty state agencies into about twenty coördinated departments in carrying out the Democratic platform of 1921.

Governor Cox commends highly the report of the commission appointed to investigate the methods of transacting public business as "one of the most valuable contributions made to the commonwealth in years," and urges its most earnest study to meet one of the pressing needs of Massachusetts—a growing degree of administrative control and responsibility.

Public education receives comment in eight states. Governor Edwards, of New Jersey, after stating that "the demand has far outstripped the school facilities, resulting in half-day sessions and crowded high schools" continues: "This condition should not be looked upon with alarm or any misgivings; it should rather be looked upon as education of all the people is a costly enterprise encouraging and hopeful;" although the per capita cost of education had increased by the amount of \$11.69 in one year to an average of \$63.82. Governor Morrow of Kentucky proposes a bond issue of \$5,000,000 in a very vigorous special message calling for the improvement of the state's charitable, penal and educational institutions.

West Virginia, Maryland, and Massachusetts governors touch on teachers' salaries; the two former to urge an increase and the latter to mention an increase in the average salary paid in the state from \$744 in 1910 to \$1486 in 1920. New York and Virginia governors urge different units for school administration; the former for the rural schools, the latter generally. Trinkle would make the county rather than the district the unit of operation. The improvement of rural schools, especially, was urged in New York, West Virginia and Rhode Island. Governor Cox announced with pride the increase of attendance in continuation schools from 8000 to 32,500 within a year and the instruction of 20,000 adults in the English language.

Improved highways were generally urged for their social and commercial value and their influence in preserving the rural life of the states. In Kentucky a bond issue of \$50,000,000 was advocated, which the governor called an investment in public business. New York's system, it is asserted, can be completed from current revenue. Governor Russell of Mississippi deploras the constitutional provision which places the jurisdiction of roads, ferries, and bridges solely in the hands of the supervisors of each county. He wishes the mapping out of a complete highway system to be placed exclusively under the state department of highways. Governor San Souci of Rhode Island approved a great increase of supervision over the operation of motor vehicles and a stricter regulation of their weights, dimensions and tire pressures along with a stringent anti-theft law. The spread of the acceptance of proper administrative principles is indicated in the request of Governor Trinkle that the governor be empowered to appoint a highway commissioner with four assistants; the commissioner in turn to appoint the engineer and the latter those who should work under him.

The governors of Kentucky, Mississippi, Georgia, Virginia and Massachusetts commend the agricultural interests to the consideration

of the legislators; the first advises coöperative marketing; the second a bureau of markets and publicity to devise an outlet for the diversified products which the farmers are substituting for cotton. He thinks a system of warehouses and cold storage plants in almost every county will follow. Georgia's governor may alarm the rest of the world in his statement: "Nature has given to the southern states a great monopoly in the production of cotton but the final reward that should follow such a situation can never be fully realized until the southern cotton farmer makes cotton his surplus crop. You can then clothe the world on your own terms." Governor Trinkle advises coöperative buying, selling, and borrowing in a strong plea for economic justice for the farmer. The extension of the grading system to onions, tobacco and such products, is suggested by Governor Cox.

Labor and its problems do not receive the attention one might expect in these times of unemployment. However, seven governors consider it. Governor Edwards holds the problems of labor to be most serious. He comments critically on the practice of employers in seeking those judges who hold decided views against picketing in efforts to obtain injunctions. He asserts that strikers have been summoned out of localities where the disturbances occurred and some tried for contempt in another county. He is not averse to trial by jury in contempt cases. Governor Morgan of West Virginia meets the labor difficulties of the state with a discourse on "governments of law and not of men," on "press exaggeration and exploitation," and on "life liberty and the pursuit of happiness." He asserts that under our form of government there is no class distinction, and surmises that no doubt the legislature will correct the abuses of the private guard or detective system. Only Massachusetts and Rhode Island governors specifically mention unemployment, the former in proposing public works and public building construction, the latter in proposing the continuance of the state free employment office which last year placed four thousand men at a cost to the state of \$1 per placement. Georgia's governor says, "my own thought is that in the gradual and joint ownership by both capital and labor of the plants of industry the so-called labor problem will finally be solved."

In most of the states it was suggested that the provisions of the Shepard-Towner act be accepted. In Rhode Island the authorization of the state health board to employ full time health officers, county or otherwise, is urged. In Virginia active health organizations in each county were advocated wherever possible; and in Mississippi the gov-



ernor thinks every county should be made to provide an all-time health officer. In New York, Massachusetts and Maryland special preventive efforts were stressed as a means of dealing with the feeble-minded in order to avoid the necessity of institutionalizing them. Governor Morrow of Kentucky speaks of two thousand so-called pauper idiots scattered all over the state and given pensions of \$75 each annually. Governor Miller stressed the curative side in treating the insane, asking for an adequate field force and an expert alienist. For the prisons, he requested an industrial manager and a system of compensating prisoners for their work. Maryland's governor announces the adoption of the state-use system in prison labor instead of the contract labor system and Governor Cox urges state control of county penal institutions at least to an extent sufficient to secure coöperative, uniform management, and assert that the state should care completely for all convicts in order to promote the possibility of productive employment, vocational training, educational facilities, psychiatric examination, adequate exercise, uniformity in diet and discipline, a proper system of parole and adequate classification.

Governor Russell demands stringent publicity for campaign expenditures and the registration of any agent or worker for particular candidates. From Georgia comes a somewhat belated advocacy of a real, rigid, Australian ballot law to end vote buying. Strict enforcement of the registration law is urged in the hope that women can be permitted to vote without re-opening the negro question politically or admitting an influx of negro women to the electorate. Governor Miller reports that gross frauds occur each year in registration and in the canvass of votes, and would compel the use of voting machines in first- and second-class cities. Governor Morgan announces the existence of a marked sentiment against the present primary system which both the major parties have disapproved. Governor Ritchie of Maryland proposes an amendment giving Baltimore two additional senators and twelve additional delegates. Legal equality for women is urged in Kentucky, Maryland and Massachusetts, at least as far as political rights are involved. Governor Cox, after stating that the right to hold office cannot be given women by constitutional amendment until 1924, proposes to ask the supreme judicial court whether the spirit and proposal of the Nineteenth Amendment have not given women the right to hold all offices under the constitution of Massachusetts.

Governor Miller, noting the 4166 judicial officers and the 3736 justices of the peace in the state who possess power to commit children as

public charges, and the 1238 county, town, or city offices with juvenile jurisdiction, urges the creation of children's courts in all counties outside of New York City and provision for county boards of child welfare. Governor San Souci proposes public aid for dependent mothers and Governor Edwards the enactment of more stringent labor laws for women. References to proposals of similar legislation are made in Virginia and Maryland.

In the field of law enforcement Governor Edwards urges the abolition of the state police force, for which \$300,000 had been appropriated the past year. Kentucky's governor asks the legislature to authorize him to remove local peace officers for neglect of duty, since the present method of removal on conviction of malfeasance or misfeasance is absolutely ineffectual. He would also make it unlawful to injure another person with a pistol or other weapon carried concealed, even though the action is taken in self-defence. In Virginia, repeal is advised for a law of 1920 granting appeal as a matter of right in every criminal case, regardless of its merits. The results have been very objectionable.

Prohibition-enforcement was mentioned in six states. Governor Edwards advocated the repeal of the present enforcement act so that the right of indictment and trial by jury might be conserved.

Mississippi and Virginia are much concerned over insurance rates. According to Governor Russell the insurance companies in Mississippi returned a total property value of \$1,675,000 for taxation and at the same time asked for a rate increase based on an investment of \$7,307,000 in the business; the insurance premiums totaled \$6,500,000 and the fire losses \$2,500,000. Governor Ritchie hints at the state conduct of fire insurance as a sort of last resort in case the companies will not give proper service. Governor Edwards wishes Congress to deprive the federal district courts of the power to hear on appeal utility cases decided by the state authorities, allowing the Supreme Court alone to entertain an appeal from the court of last resort in each state. Advocates of public merchandising may be interested in Governor Russell's advice that the state lime plants be closed because of prohibitive freight rates, and the suggestion of Governor Hardwick of Georgia that the \$540,000 annual interest from the state railroad (the Western and Atlantic) might have to be discounted to meet current needs. The conservative Governor Miller fears the pressure which could be brought to bear for the leasing of water power from the state canal and would substitute for leasing the state's development and sale of this power. He also believes that the state should grant licences preferably for

the distribution of power derived from the state water rather than for its private use.

Regarding canals Governor Edwards states that the Morris Canal has outlived its usefulness; and Governor Miller after showing that \$167,000,000 have been expended on the state barge canal, insists that this expenditure must be made to render some adequate service by means of modern equipment and a campaign of education on the advantages of using the canal.

Some miscellaneous proposals are worth recording. Governor Russell would make the acceptance of a fee in a pardon case a criminal offence, partly because of the dangerous political influence frequently brought to bear by the prisoner's attorneys. Both the Massachusetts and Rhode Island governors urge the establishment of emergency funds to be used under the governor's direction between sessions. Governor Russell, referring to a petition circulated in behalf of the insurance companies says "it has been signed by men, women and children, (and some negroes) indiscriminately." The governor of Maryland early in his message enumerates the specific pledges of his party platform to the number of twelve and adds "as will be shown in detail, every one of these pledges is carried out to the letter in bills which will be submitted to you."

Rhode Island's governor urges the legislature to restrict rent profiteering, to provide a judicial determination of fair rent, to allow a stay of judgment of six months in a landlord's suit to recover possession of rented premises, and to make oppressive agreements unenforceable. In a special message Governor Miller approved the plan of the port authority for New York; at the same time denouncing the obstructive tactics of the New York City officials who have proposed that the 105 municipalities included within the port district be erected into a new state. Declaratory judgments are approved by the governor of Kentucky. One of Governor Russell's flights of oratory follows: "It was descent unlooked for, swift and tragic in the extreme, but an empire that went through the fire and brimstone of the Civil War and had risen phoenix like from the ashes of her wars, arose and shook herself like a sleeping giant, took new courage and began the year 1921 with a firm and steady step and a grim determination to profit by the experience of the tragic year 1920, and the result was they accomplished at least two wonderful achievements."

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## NOTES ON INTERNATIONAL AFFAIRS

**The Washington Conference.**<sup>1</sup> The objects of the international conference which sat in Washington from November 12, 1921, to February 6, 1922, were set forth in President Harding's formal invitation of August 11, 1921, to Great Britain, France, Italy and Japan.<sup>2</sup> These objects included two distinct topics, limitation of armament, and Pacific and Far Eastern questions. The problem of an association of nations, emphasized in the Republican platform of 1920 and various addresses by President Harding, lay in the background though not on the formal agenda, published September 21, 1921.

**Organization of the Conference.** The conference consisted of plenary sessions and committees. The plenary sessions were formal occasions attended by all the delegates, in which announcement was made of programs for discussion or agreements reached. They were not intended for negotiation but for declaration. They were held in Continental Memorial Hall, a handsome marble building on Seventeenth Street, erected by the Daughters of the American Revolution, and were open to members of the Senate and House of Representatives, representatives of the press and such of the public as had cards of admission from the state department.

The delegates sat at a "U"-shaped, green-covered table with Mr. Hughes as chairman at the head of the "U." The remaining American delegates sat at his right, the British at his left and then in regular alternation the French, Italian and Japanese delegations. Thus, as is customary in such gatherings, an alphabetic order was followed. The powers attending merely the Far Eastern but not the Limitation of Armament Conference sat at the ends of the "U" in a similar order, Belgium, China, Netherlands, Portugal. In the center of the "U" sat the secretary of the conference and the official interpreter, M. Camerlynck, ready to repeat instantly every English speech in French and vice versa, for both these languages were official in the conference.

<sup>1</sup> An article which appeared in the *Minnesota Law Review*, March, 1921, was used in the preparation of these notes.

<sup>2</sup> On July 10, 1921, the department of state announced that these powers had been "approached with informal but definite inquiries" on the subject.

Back of the delegates sat their technical experts. Since the auditorium seated only about 1200 persons, subtraction of the space occupied by delegates, experts, senators, representatives and the press left a remainder of forty seats to rotate among those of the public who wished to attend. The real work of negotiation was conducted by committees. There was a committee of the whole on armaments with five powers represented and a committee of the whole on the Far East and Pacific with nine powers represented. These appointed many subcommittees, some of delegates, some of experts, and some mixed. Committee or subcommittee meetings went on almost continuously in the Pan-American building next door to Continental Memorial Hall, closely guarded by marines with fixed bayonets.

The delegations were assisted by technical experts. Of these Japan had the most. The American delegation was also assisted by an "advisory committee" selected by the President, so as to represent prominent organizations of the country, designed to form a liaison between the conference and the public.

Publicity was handled in the manner customary with international conferences. Plenary sessions were public, committees and subcommittees met in private. The public gained only such information of the latter as was given out in *communiqués* prepared for the press by the committee itself or in press interviews by plenipotentiary delegates. The latter method gave ground for occasional protest by certain delegations who felt that confidential discussion had been prematurely published. News of committee happenings sometimes came to Washington via London, Paris or Tokyo where it had leaked out through the foreign offices of those countries. Finally, the fertile imaginations of newspaper correspondents were a source for filling news columns if not always for distributing accurate information. Stories of violent disagreement in committee meetings, one of which occasioned an anti-French riot in an Italian town, had to be officially denied by the plenipotentiaries reputed to have participated. Although this type of rumor was something of an embarrassment to the conference, on the whole its progress endorsed the experience gained at Versailles and in the League of Nations that negotiations can be most satisfactorily conducted withdrawn from the glare of public opinion, but that agreements should be published as soon as reached.

The United States Senate has discussed the Washington treaties in open session as they did the treaty of Versailles. To facilitate this discussion the President in submitting the treaties to the Senate on

February 10, 1922, accompanied them with complete minutes of both plenary session and committee meetings and a copy of the official report of the American delegation.

*Negotiations.* "Our hundred millions frankly want less of armament and none of war." Thus President Harding struck the keynote of the conference at its opening meeting and in spite of much haggling for national advantage in committee meetings the pitch was not wholly lost through the seven plenary sessions which marked the progress of negotiations.

On the opening session, November 12, 1921, after President Harding's address of welcome, Secretary of State Hughes was elected chairman and surprised the conference and the world by laying down a concrete program for the limitation of naval armaments. On November 14 a session was held in which Mr. Balfour for Great Britain, Premier Briand for France, Admiral Baron Kato for Japan and Senator Schanzer for Italy accepted the American proposal "in principle."

Committee negotiations upon the details of this proposal began at once as also upon the Far Eastern problems, but before any conclusions had been reached another plenary session was held, on November 21, to afford Premier Briand the opportunity to say that France was unwilling to discuss an agreement for the limitation of land armament until Germany was "morally" as well as "physically" disarmed. He cited passages from General Ludendorff's recent book to prove that this happy state had not been reached. Delegates of the other powers diplomatically voiced their disappointment, Senator Schanzer of Italy expressing the hope, doomed to disappointment, that the land armament item on the agenda would not be abandoned.

After three weeks filled with committee negotiations over the Japanese demand for a 10, 10, 7 naval ratio instead of the 5, 5, 3 ratio proposed in the American plan, the conference again sat in plenary session on December 10. Previous to the meeting, information had reached America from foreign capitals that a Pacific alliance was being negotiated, and at this meeting Senator Lodge of the American delegation presented the four power Pacific Pact, which he noted covered islands ranging in size from "Australia, continental in magnitude to atolls where there are no dwellers but the builders of coral reefs," islands upon which "still shines the glamour of some of the stories of Melville and the writings of Robert Louis Stevenson." Unfortunately he neglected to refer to the home islands of Japan which the committee had agreed were included, thus misleading President Harding, who offered a contrary

interpretation in a press statement, December 20. This was, however, withdrawn six hours later with the comment that the President had "no objection to the construction" which the delegates had agreed upon. It appears that the inclusion of the Japanese home islands had been originally insisted upon by Great Britain as a sop to the pride of Australia and New Zealand which were also included. The attitude of the United States Senate however, seemed to jeopardize the whole agreement and as Japan was not averse, a subsequent resolution expressly excluded her home islands.

The next plenary session was held on February 1, the seven weeks interim being filled with difficult committee negotiations. The United States, Great Britain and Japan announced substantial agreement upon the American naval limitation program on December 15, the most important modification being the concession to Japan whereby she was to retain the *Mutsu*, which was to have been scrapped. This was a new vessel built by popular subscription and of sentimental importance. Great Britain and the United States were in consequence to complete two new Post-Jutland battleships. More old vessels were to be scrapped, thus leaving the total tonnage and the ratios substantially as in the original proposal. More formidable difficulties in the naval treaty were presented by the French demand for the privilege of building ten Post-Jutland battleships of 35,000 tons each, only withdrawn after Mr. Hughes had cabled Premier Briand, who had returned to France, that insistence upon this demand would wreck the treaty. France however, accepted the 1.75 ratio for capital ships, with the understanding that she be allowed a larger ratio of "defensive ships" in which category she included submarines. In spite of the British demand for total abolition of submarines,<sup>3</sup> and the American desire to limit their number to 60,000 tons for United States and Great Britain with tonnage on the adopted capital ship ratios for the others, France was obdurate. With the failure of submarine limitation, efforts to limit the total tonnage of surface auxiliaries, which certain powers thought necessary to combat them, also failed and the conference had to be content with the Root resolution declaring submarine use against merchantmen piracy, and limiting the size of naval fighting auxiliaries

<sup>3</sup> This demand was in accordance with British traditions. Earl St. Vincent of the British Admiralty said to Robert Fulton, when the latter presented plans for a submarine in 1804: "It is a mode of war which we who command the seas do not want, and which if successful would deprive us of it." Bywater, *Atlantic Monthly*, February 1922, Vol. 129, p. 267.

except aircraft carriers to 10,000 tons. Vessels of larger tonnage were to be regarded as capital ships. Perhaps the warmest debates of the conference occurred on the submarine issue, since Great Britain regarded the French demand as a menace to her safety.

Discussion of the Chinese problem was begun by the presentation on November 16 of ten points by Mr. Sze. These were abandoned and four general principles formulated by Mr. Root and restating the Hay Open Door notes of 1899 and 1900 were adopted. Detailed application of these principles proved difficult, and several Chinese technical experts resigned in disgust. In fact all progress threatened at times to be held up by the failure of China and Japan to agree in their special conversations on Shantung, begun at Washington on December 1, through the good offices of Mr. Hughes and Mr. Balfour.

These negotiations finally succeeded, and in the plenary session of February 1, the Shantung treaty was published together with the five power naval limitation treaty (the five power treaty restricting the use of submarines and poison gases) and a number of resolutions on the Far East which had been previously adopted in committee.

A session of February 4 published two nine power treaties on China, one attempting to assure the territorial and administrative integrity of China and the open door, the other providing for Chinese customs administration. At the final meeting February 6, the five treaties were formally signed and President Harding made a concluding address.

Thus the work of the conference was embodied in five treaties explained and amplified by two subsidiary treaties, twelve resolutions and ten unilateral declarations.

Three treaties, relating to Shantung, Yap and Pacific cables were negotiated at Washington concurrently with the conference.

*Senate Action.* The treaties with the resolutions directly pertinent thereto, were presented to the United States Senate by President Harding in person on February 10, with the comment:

"All the treaties submitted for your approval have such important relationship, one to another, that, though not interdependent, they are the covenants of harmony, of assurance, of conviction, of conscience, and of unanimity. . . . I submit to the Senate that if we can not join in making effective these covenants for peace, we shall discredit the influence of the republic, render future efforts futile or unlikely, and write discouragement where today the world is ready to acclaim new hope."



The treaties were immediately referred to the Senate foreign relations committee, which reported first the Yap treaty with Japan. This was approved by the Senate by a vote of 67 to 22 on March 1, and the four power Pacific treaty was promptly submitted. Opposition was led by the indefatigable irreconcilables on the Versailles treaty, Senators Borah, Johnson, Reed, France and LaFollette, supported by some Democrats who favored the League of Nations. However, after vigorous debate, the treaty was approved on March 25 by a vote of 67 to 27, with a reservation declaring that "the United States understands that in the statement in the preamble or under the terms of this treaty there is no commitment to armed force, no alliance, no obligation to join in any defense." Further difficulty arose because of the failure to include in the resolution of ratification the supplementary declaration excluding domestic questions from conference of the four powers and the supplementary treaty excluding the Japanese home islands. After two days debate, however, the Senate consented to ratification of these documents. The remaining treaties of the conference were approved during the next week without reservation and almost unanimously.

These various treaties, resolutions and declarations embody achievements, more or less complete in the three fields which the conference had before it. We may therefore consider in succession its results as to limitation of armament, Far Eastern and Pacific questions, and an association of nations.

*Limitation of Armament.*<sup>4</sup> The Washington treaties on naval armament limitation are based on four general principles laid down in Mr. Hughes' original proposal:

"(a) The elimination of all capital ship building programs, either actual or projected.

"(b) Further reduction through scrapping of certain of the older ships.

"(c) That regard should be had to the existing naval strength of the conferring powers.

<sup>4</sup> For a history of the efforts to limit armaments, see Wehberg, *Limitation of Armaments* (Washington, 1921), pp. 5-6, translated from French edition, 1914; the same author's more exhaustive *Die Internationale Beschränkung der Rüstungen* (Stuttgart und Berlin, 1919), pp. 3-9; Fried, *Handbuch der Friedensbewegung*, (Berlin und Leipzig, 1913), II, pp. 3-56, and Wright, *Limitation of Armament* (Institute of International Education, Syllabus No. XII, November, 1921).

"(d) The use of capital ship tonnage as the measurement of strength of navies and a proportionate allowance of auxiliary combatant craft prescribed."

In detail they provide for a discontinuance of all capital ship building for ten years, certain replacement being allowed France and Italy after 1827. Capital ships include every "vessel of war, not an aircraft carrier, whose displacement exceeds 10,000 tons' standard displacement or which carries a gun with a calibre exceeding 8 inches." Existing capital ships are to be scrapped so as to leave the United States 18 (525,850 tons), Great Britain 20 (558,980 tons), Japan 10 (301,320 tons), France 10 (221,170 tons), Italy 10 (182,800 tons). After 1931 ships over twenty years old may be replaced so as to maintain ratios of 525, 525, 315, 175, 175 among the five powers, no vessel being over 35,000 tons. The treaty is to be effective for fifteen years and to continue after that unless denounced with two years' notice. It may be suspended in time of war with exception of the articles relating to scrapped vessels.

Aircraft carriers are limited with regard both to total tonnage and individual tonnage, but aircraft themselves are not limited. Submarines and fighting surface auxiliaries may not exceed 10,000 tons' displacement or carry guns over 8 inches, but there is no limitation in their total tonnage. Merchant vessels may not be prepared for military use in time of peace except to stiffen decks for guns of not over 6 inches.

No limitation is placed on land forces or armament. The status quo "with regard to fortifications and naval bases" is to be maintained in the American, British and Japanese insular possessions in the Pacific except Hawaii, Australia, New Zealand and the Japanese home islands and the islands near the American continent exclusive of the Aleutians.

Rules were adopted declaring the use of submarines against merchant vessels to be piracy and prohibiting the use of noxious and poisonous gases, and a resolution urged the calling of a conference to consider laws of war.

These armament limitation provisions go an enormous step beyond all previous treaties on the subject. They should result in a genuine saving of money through the discontinuance of capital ship programs. "This treaty" said Mr. Hughes in the plenary session of February 1, "ends, absolutely ends, the race in competitive armament." Without minimizing the achievements of the conference, it is well to recall that the problems of land armaments, submarines, naval vessels under 10,000 tons and aircraft remain. Competition in these types of

armament is still possible without violation of the treaty. The importance of this is emphasized through the growing opinion of professional naval men that even in the absence of international agreement, future navies would have been composed of smaller vessels, because of the increasing difficulty of properly defending super-dreadnaughts from submarines and aircraft.

While the illegitimate use of submarines and the use of poison gases were prohibited it is well to recall that the same prohibitions were recognized under customary international law and the Hague Conventions on August 2, 1914. Too much should not be expected of rules of warfare. Unless framed so that their observance serves the military aims of belligerents better than their violation, they will be of remedial rather than preventive value. They will give the victor a ground of action but will not mitigate the horrors of war.

"We may grant," said Mr. Root in presenting the treaty, "that rules limiting the use of implements of war made between diplomats will be violated in the stress of conflict. We may grant that the most solemn obligation assumed by Governments in respect of the use of implements of war will be violated in the stress of conflict, but beyond diplomatists and beyond Governments there rests the public opinion of the civilized world, and the public opinion of the world can punish."

*Far East and Pacific Questions* were concerned primarily with China, but Pacific islands and Siberia were also on the agenda.

The absence of Russia from the conference precluded action on the latter beyond a resolution taking cognizance of the Japanese declaration of intention eventually to withdraw its troops from Siberia and northern Sakhalien. No time was stated.

On Pacific Islands the fortification *status quo* provision of the naval limitation treaty has been referred to. More important is the four power pact by which the United States, Great Britain, France and Japan "agree as between themselves, to respect their rights in relation to their insular possessions and insular dominions in the region of the Pacific Ocean" and "if the said rights are threatened by the aggressive action of any other power to "communicate with one another fully and frankly in order to arrive at an understanding as to the most efficient measures to be taken, jointly or separately, to meet the exigencies of the particular situation." A subsequently adopted resolution excludes the Japanese home islands from the treaty. Attached resolutions exclude domestic questions from the controversies which may be a subject of discussion under Article I, and reserve the privilege

to the United States to negotiate with reference to mandated islands which are declared within the scope of the treaty. The agreement is to continue for ten years and more unless denounced with a year's notice. Its dual object from the American standpoint of superseding the Anglo-Japanese alliance and protecting the Philippines seems to have been achieved, the first expressly. The treaty is between only four powers and is confined to insular possessions and dominions in the Pacific but in other respects it seems to bear a close resemblance to Article x of the League of Nations Covenant by which

"The Members of the League undertake to respect and preserve as against external aggression the territorial integrity and existing political independence of all Members of the League. In case of any such aggression or in case of any threat or danger of such aggression the Council shall advise upon the means by which this obligation shall be fulfilled." Mr. Lodge, however, in presenting the four power pact to the conference on December 10, distinguished it from this article, and in offering the treaties to the Senate on February 10, President Harding said:

"There is no commitment to armed force, no alliance, no written or moral obligation to join in defense, no expressed or implied commitment to arrive at any agreement except in accordance with our constitutional methods. It is easy to believe however, that such a conference of the four powers is a moral warning that an aggressive nation, giving affront to the four great powers ready to focus world opinion on a given controversy, would be embarking on a hazardous enterprise."

This statement, however, leaves some doubt as to the President's interpretation of the pact. If the clauses of the first sentence are separable and the parties are under "no written or moral obligation to join in defense," it is difficult to see why an aggressive enterprise would be any more "hazardous" with the treaty than without it. If on the other hand, the final qualification applies to all the preceding clauses, the President seems to imply that there is a "commitment to armed force" provided "our constitutional methods" are followed. Although the latter interpretation is more in accordance with the language of the pact and of the President's statement, the former is in accord with his language earlier in the message, "The four-power treaty contains no war commitment" and has been definitely accepted as the American interpretation by the Senate reservation.

Closely connected with this treaty are the negotiations over the island of Yap between the United States and Japan, conducted independently

of, but concurrently with the conference. These began in the summer of 1921 and resulted in a treaty signed February 11, 1922. By this treaty the United States recognizes the Japanese mandate in Yap under the League of Nations, and Japan agrees to accord the United States full rights in all that relates to cables on the island. The United States, Great Britain, France, Italy, Japan and the Netherlands have also practically concluded a negotiation dividing the former German Pacific cables between the United States, Japan and the Netherlands.

The Washington treaties with their appended resolutions go immeasurably beyond earlier agreements in respect to China. The tariff treaty does not restore Chinese tariff autonomy but does provide for periodic revisions to assure China five per cent on imports, in exchange for which China agrees to abolish likin or domestic sales taxes, and to fulfill existing treaties with respect to taxation.

The more important Chinese treaty begins by reiteration of general principles in respect to China formulated by Mr. Root and resembling the Hay statements. The powers other than China agree:

"1. To respect the sovereignty, the independence, and the territorial and administrative integrity of China.

"2. To provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government.

"3. To use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations through the territory of China.

"4. To refrain from taking advantage of conditions in China in order to seek special rights or privileges which would abridge the rights of subjects or citizens of friendly states, and from countenancing action inimical to the security of such States." The powers agree to refrain from making treaties, agreements, arrangements or understandings "either with one another or individually or collectively with any other power or powers which would infringe or impair" these principles. A more substantial guarantee is given to the last two principles through the creation of an international board of reference in China to investigate and report whether future concessions in China are in accord with the open door. The original proposal to give the board authority to consider past as well as future concessions failed of acceptance, though a resolution provided that past concessions be published. China herself agrees not to permit unfair discrimination in economic matters, particularly railways.

Various agreements, resolutions and declarations connected with the treaty aim to give concrete application to the first two of the Root principles. Some of the resolutions are considered within the scope of executive agreements and so were not submitted to the Senate for ratification. The Shantung treaty between China and Japan greatly promotes restoration of the territorial integrity of China. Japan agrees to restore the leased port of Kiau Chau and to sell back the Tsing-Tao-Tsinanfu railway for Chinese treasury notes redeemable in fifteen years or, at Chinese option, in five years. Japan is to have a traffic manager and chief accountant under a Chinese managing director until payment is complete. Following announcement of this treaty, Mr. Balfour declared the British willingness to restore her leased port of Wei-Hai-Wei to China. France indicated a willingness to negotiate for the restoration of Kwang-chau-wan. If these negotiations are successful the Japanese lease of Port Arthur and part of the Liaotung Peninsula and the British lease of Kow-Loon near Hong Kong would alone remain. China declared her intention to make no more leases. Aside from the two leases, the British island of Hong Kong, the Portuguese port of Macao and the Japanese Island of Formosa and privileges in Manchuria remain as subtractions from the territorial integrity of China as she existed before contact with Europe.

The administrative integrity of China gained through resolutions providing for withdrawal of foreign postoffices by January 1923, and of unauthorized foreign radio stations; for a commission to report on the practicability of removing extraterritorial jurisdiction, and for a consultation looking toward the removal of foreign troops in China. In the Shantung treaty Japan agreed to withdraw troops from that area and the powers requested China to reduce her military forces. Japan also declared her willingness to abandon group five of the twenty-one demands of 1915 which China had never accepted.

Though China has by no means regained full territorial and administrative integrity, yet substantial steps in this direction have been taken. The United States will have less cause to worry about the Philippines, agreement has been reached on the vexing problems of Yap and the Pacific cables, and the Anglo-Japanese alliance has been superseded. Made in 1902 against Russia, renewed in 1905 and 1911 against Germany, it seemed in 1921 to have no objective unless the United States. Yet to denounce it after the loyal observance by Japan during the World War would hardly comport with British honor. The addition of France and the United States seemed the easiest way out and this was achieved by the four power pact.

*Association of Nations.* The problem of an association of nations was emphasized in the Washington conference because of the struggle in the United States over the League of Nations. President Harding and Senator Lodge had voted for the league with reservations while Senator Underwood had voted for it without reservations. Secretary Hughes and Mr. Root had openly favored the league in public speeches and had signed a letter on October 14, 1920, with twenty-nine other prominent Republicans urging the election of President Harding as the shortest route to American entry into the league. The Republican platform subsequently adopted, contained a clause drafted by Mr. Root favoring an association of nations, but without assuming a definite position on the league.

All of the powers in the Washington conference except the United States were members of the league and most of the delegates, including Messrs. Balfour, Viviani, Schanzer, Koo, and Karnebeek had taken a prominent part in its work, notably in the discussions of armament limitation at the Second Assembly of the league which ended a few weeks before the Washington conference met. Nothing, however, was said about the league in the conference deliberations, though the United States recognized that organization through recognition of the Japanese mandates under it in the Yap treaty negotiated at the same time.

On November 25, President Harding suggested to a group of newspaper men that the limitation of armament conference might well furnish a precedent for future conferences, thus creating a loose association of nations, and in his concluding address on February 6 he said:

"Since this conference of nations has pointed with unanimity to the way of peace today, like conferences in the future, under appropriate conditions and with aims both well conceived and definite, may illumine the highways and byways of human activity. The torches of understanding have been lighted, and they ought to glow and encircle the globe."

Though no association is formally referred to in the treaties, numerous clauses authorize the calling of future conferences or the establishment of commissions. The functions of these bodies vary from political and administrative to quasi-judicial in character. Thus the United States is to arrange for a conference in eight years to revise the naval limitation agreement. Other powers may call such a conference in emergency and one must be called after a war which has suspended the treaty. A conference to revise the rules of war is authorized, as is one to revise

the Chinese customs tariff. A commission is appointed to consider the question of extritoriality in China and by the four power pact the powers agree to meet in joint conference if a question arises over Pacific possessions. Finally a board of reference to consider questions under the open door agreement is provided for.

These provisions for future conference are not in any sense a substitute for the League of Nations, with its permanent secretariat, periodical council and assembly, administrative commission and Permanent Court of International Justice. The experience of Washington has undoubtedly convinced European statesmen of the utility of the league and of its permanence, whether or not the United States elects to enter it. The league has greeted the efforts at Washington as helpful coöperation in their own work, but they see in it no association of nations which could possibly become a rival.

QUINCY WRIGHT.

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**Sanctions and Guaranties in International Organization.** The idea of a sanction for political or legal regulations ordinarily includes both a measure of force which is deliberately placed behind the terms of a political and legal arrangement by its authors for the purpose of enforcing that arrangement and rendering it effective upon those to whom it is intended to apply, and also a measure of force which in actual fact does stand behind the terms of such an arrangement and tends to render it effective although it has not been placed there by the authors of the pact. It is under the second description of sanction that we encounter the proposition that the basic sanction of any international organization today is to be found in the body of world commerce and world communication which has come into being in the past fifty years. That body of world commerce and world culture has become so considerable in extent and in its complexity as to demand the creation of some international organization to take care of it, and so influential as to provide to any organization which is created its most powerful support. This proposition may be accepted at face value as our starting point.

For this state of affairs in the non-political and non-legal world of trade and travel to have its due effect in the world of politics and government, however, it is necessary for people, first, to become thoroughly aware of the condition of things in the world in which they live, and second, to reflect upon this condition of things so that a body of opinion will be formed which will dictate political and legal action in accordance



with the practical needs of the time. Here is the first defect in the operation of what would normally be the most powerful sanction of international organization today. People do not yet sufficiently realize the unity of the world in trade and in all the interests of daily life for that unity to make itself felt in international politics. Those interested in building up sanctions for international organization should direct their energies first to the task of making people see the facts as they are and acting on them, instead of acting on the basis of ideas and principles long since obsolete as descriptions of the facts of international life.

Most people, of course, are beginning to be aware of the condition of affairs to which reference has just been made. This frequently leads them to take a general attitude far more favorable toward international organization, as an idea or a general program, than they were wont to take in the past. This does not, however, constitute a denial or reversal of the conclusions of the preceding paragraph, for the ensuing action reveals a second defect in the mechanism of sanctions in international organization. Those very people who are most ready to admit that the world has changed and that international organization is needed today as it was never needed before, are the first to balk when they are asked to approve a specific step in the process of setting up a world government and providing it with power to accomplish its purposes. The result is that we have much talk today about the need and the desire for international organization and not very much of the thing itself. It should be the task of those interested in the creation of effective world government to point out to the good people who preach international coöperation but are afraid to join in the practice thereof that what is needed now is not the general idea of international government but government actually applied to the details of international life.

Suppose, then, that some erstwhile opponent of international organization, or some Platonic but ineffectual supporter, were to rouse himself by a sudden effort of the will and inquire, in a challenging voice: "Well, then, what would you have? An international army and navy?" What should be the reply of the internationalist to this most obvious question in connection with the problem of sanctions? It seems that he should begin by pointing out that in most cases there exists ample force to render international organization effective without the employment of armed might, if only it were possible to bring that force into contact with the subject matter of, or the parties to, international disputes. That force is to be found in the facts of world trade and finance mentioned at

the outset and in the force of opinion produced by these facts. That force of international public opinion is ineffective today mainly because the means are lacking for bringing it to bear in the crises of international life. What is needed as much as anything else is such a hearing and discussion of the international dispute when it arises as will enable interested and intelligent students and critics of international politics in all countries and the members of the business and financial communities to bring their influence to bear upon the parties. Evidence in support of this conclusion is to be found in the resistance which the apostles of national independence make to any proposal for conference or arbitration on the motion of one party to a dispute. They fear to put themselves in the path of the force of opinion which could operate without fleets or armies if it were merely given the chance. This means that the problem of sanctions is at this point simply one phase of the problem of jurisdiction, and that the friends of effective international organization should lend all their efforts to securing international agreements for hearing and arbitration upon the motion of one party, thus bringing into play the most powerful sanction available and the one which must be relied upon for final support in any event.

If space permitted, we might go into the question of just how this force of opinion operates upon the parties to a dispute. Why or how was the League of Nations able to make headway with the disputes over the Aaland Islands, Silesia, and Albania without the use of armed force and with all parties to those disputes perfectly aware that the league was without armed force and that the powers supporting the league would never be willing or politically able to employ armed force for the enforcement of its decisions? Because the parties were afraid to draw upon themselves the disapproval of those powers and of people in Europe in general, with the diplomatic and political and commercial hostility which that would entail.

When we turn to the practice of the past and inquire concerning the cases where the states have been willing to create sanctions in the shape of armed force in support of definite arrangements and to give each other specific guarantees backed by armed force, we discover how far we are from anything like substantial accomplishment in that direction. Formal guarantees in the past have only pretended to extend to independent political and territorial existence—the most elementary item in state life! When we think of all the minute rights and privileges which are guaranteed to the individual citizen by the state over and above the elementary right to exist we see how far we have to go in international

organization before we shall reach a secure and protected state existence. Even where state independence and territorial possessions have been guaranteed in the past this has commonly been done by one or two states rather than by the family of nations acting as such, and the terms of the guaranty have been such that the state guaranteed was far from being able to count upon automatic action by the guarantors when the need arose. In view of these facts, it is not too much to say that down to 1919 there never existed a general guaranty of any kind among the states of the world, and that today there still exists no effective guaranty and no pretense of guaranteeing anything beyond the bare minimum of existence.

Are people ready for anything more? Are they even ready for the limited guaranty of Article x? The people of the second and third class powers seem to be ready for the latter and, judging by the way in which the smaller powers have responded to the invitation to adhere to the statute for the new permanent court on terms which amount to an agreement for obligatory arbitration, for some steps beyond Article x. It is not so evident that the people of the great powers are ready for such steps, and there is some doubt whether the people of all the great powers are ready for the elementary step involved in Article x, much less an Article x which provided for automatic action on the guaranty instead of mere consultations and recommendations. These powers and their people count on being able to take care of themselves, and they do not, therefore, see any great need for the establishment of such guaranties. They do not count the cost of war produced by the general instability of the international system as one of the arguments in favor of setting up such a guaranty, but, rather, as an argument for evading what appears to them just one more danger of, and even an invitation to, war. And their politicians, with whom will rest the decision for peace or war so long as no system of automatic guaranties is established, are opposed to any step which would hamper the national discretion and their own opportunities for influence.

When we turn more specifically to the United States we find all these conclusions reinforced by the facts in the case as it affects our own country.

The United States is not situated so close to other countries and is not so dependent upon other countries as to feel keenly the way in which the different parts of the world have come, in general, to be dependent upon one another for their daily existence. Qualifying this, but qualifying it in only a relatively unimportant degree, the influence of European

economic facts and conditions upon American industry and commerce since 1914 has convinced many Americans who were formerly of an opposite opinion that some international organization is necessary and that the United States should join some association of nations. But such an association must not be of the tremendously powerful type of the League of Nations! We are for international coöperation as an idea, but we are afraid to give that idea, or any embodiment of that idea, real power and the right to use that power. We talk about a court "with teeth," but we prefer our league to be toothless. For this distinction there is a certain amount of explanation which we shall notice in a moment, but the main fact in the situation is already clear: it is the question of sanctions that determines the reaction of the people of the United States toward the league. They are afraid, it seems, either to join in the giving of guaranties which they may have to back up with their power and might, or they are afraid of having guaranties invoked against them. Thus our reaction in the specific question of sanctions is a denial of our attitude on the question of international organization in general and makes us appear to be either hypocrites in our professions or mere phrase-mongers in our beliefs.

The reasons for the position of the leaders of American opinion in supporting the general idea of international organization but refusing to support the specific embodiment of that idea in the league, and for the desire for a court with teeth while preferring to leave the league without any means of making its actions effective, is to be found in the belief that the league will not, in general, base its decisions or rulings upon legal justice but upon immediate convenience, expediency, and diplomatic and political advantage and influence. Leaving out of account the new permanent court, this belief is probably sound. But what is the relation between this fact and the problem of sanctions? It is simply the consideration already mentioned converted into a new form: the leaders of opinion and the politicians in the United States believe that we shall be able to take care of ourselves in all cases where a settlement must be reached by the methods of diplomacy, provided that we are allowed to look out for our own interests in such cases and are not hampered by being tied up to some scheme for general conferences and discussions by all the powers. They are willing for the United States to commit itself to action for the enforcement of international agreements only where those agreements can be made to take the form of legal decisions based upon general law; in these cases they are forced to recognize that the maintenance of the general law of

nations is a thing in which all are interested even in those disputes where their rights are not directly involved, and a task which can be accomplished only by the constant coöperation of all the nations.

It is here that the weakness of such a position becomes apparent. For the object to be served in the maintenance of the authority of the league in its non-legal actions, or in the maintenance of the authority of any international organization in such actions, is the maintenance of the idea of international authority in general, as opposed to nationalistic anarchy, and this idea of international authority is the only foundation which can give to the law of nations itself that authority which it must have if it is to command respect. The idea of individual national consent to each and all of the rules of international law is too fragmentary and insecure a foundation to support a really binding and effective system of law. By undermining the general idea of international authority as embodied in the league and in denying it their backing, our statesmen and political leaders have helped to undermine the foundations for that system of international law in the name of which they have opposed the league.

Of more immediate effect in turning the course of opinion in the United States against the giving of guaranties of territorial integrity through the league or any international organization, perhaps, has been the fact that that question has been presented in an unfortunate way by those charged with the task of securing the consent of the American people. The supporters of the league have allowed the question to be discussed as one of giving protection to this nation or that nation, rather than to all nationals, or, rather, to that one of all the nations which happens to need to be protected at the time. Now it may not seem to be a great improvement upon the first form of the question, from the point of view of one who is interested in the reduction of the obligation involved, to talk of guaranteeing all nations instead of one. In reality it constitutes a considerable reduction, for it converts an obligation to act on behalf of one nation, and for the benefit of one nation, into an obligation to act on behalf of, and for the protection of, the interest of all the nations, the community of nations as a whole, including ourselves, in the secure enjoyment of independence and territorial integrity. What is really involved is a participation in a general guaranty of general international law and order, and this aspect of the matter has not been sufficiently stressed in inviting the American people to join in the guaranty of the league. The politicians have been allowed to distort the issue of sanctions and guaranties in relation to international

organization until it is going to be a difficult thing to get the matter clear again in the public mind.

To what conclusion must we come after a review of the circumstances? It seems that we must agree that the problem of sanctions is not so simple as that of merely organizing an international army and navy for use in enforcing the decrees of the league or some other international organization, but that it ramifies into the questions of international jurisdiction and the nature and basis of international law proper; that the smaller nations present relatively little difficulty in the settlement of the problem; that among the great powers the United States stands as the greatest opponent to the creation of sanctions and guaranties; and that this is due in part to an attitude natural to all the great powers, but in part also to a curious perversion of thought for which the legalists among us are primarily responsible, as well as to a distortion of the issue which the ineptness of the advocates of international guaranties has allowed the politicians to create and perpetuate. Other great powers are about ready to give and take guaranties and sanctions; this is not so much because they feel that they, individually, need such guaranties directly, but because they do feel that they need the condition of stability and respect for international authority which can be created only in this way. They are not, moreover, manifesting any great anxiety concerning any loss to their sovereignty and independence by such action. When the issue is properly presented to the people of the United States they will take the same attitude.

PITMAN B. POTTER.

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## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

The chairman of the program committee of the American Political Science Association for 1922 is Professor Robert J. Crane of the University of Michigan.

Reprints of "The Study of Civics," which appeared in the February issue of the REVIEW, may be had by applying to the secretary of the American Political Science Association, Madison, Wisconsin. This document comprises the report of a committee on instruction in political science of which Professor William B. Munro, of Harvard University, is chairman.

A list of doctoral dissertations in political science now in preparation, supplementary to the list published in the REVIEW in February, 1920, will be printed in this department in the August issue.

Professor Edwin M. Borchard, of Yale University, is giving the courses at Columbia University ordinarily given by Professor John Bassett Moore, now sitting as a member of the Court of International Justice at The Hague. The arrangement will continue next year.

Dr. Charles A. Beard will deliver a series of lectures at Dartmouth College on the Guernsey C. Moore foundation. The lectures will deal with social, economic, and political conditions in Europe.

Professor W. W. Willoughby, of Johns Hopkins University, has been granted leave of absence for the first semester of next year in order to enable him to visit South Africa and India. Professor Willoughby served as technical expert to the Chinese delegation during the Washington Conference and is publishing through the Johns Hopkins Press a semi-official report entitled *China at the Conference*.

Baron Sergius A. Korff, professor of political science at Georgetown University, delivered in April a series of lectures at Northwestern University on the Norman Waite Harris foundation. The lectures dealt with the general subject of autocracy and revolution in Russia.

Professor S. Gale Lowrie, of the University of Cincinnati, has been granted leave of absence for next year and will spend the year in China.

Professor Henry Jones Ford is on leave of absence from Princeton University and is completing his volume on representative government. He expects to spend next year in Italy.

Among summer session appointments in political science are: Professor W. J. Shepard, of Ohio State University, at the University of Minnesota; Professor F. W. Coker, also of Ohio State, at Leland Stanford University; Professors P. B. Potter, of the University of Wisconsin, and R. T. Crane, of the University of Michigan, at the University of Chicago; Professor C. E. Merriam, of the University of Chicago, at Columbia University; and Professor T. H. Reed, of the University of California, at the University of Michigan.

Mr. E. E. Witte, secretary of the Wisconsin industrial commission, has been appointed to the directorship of the Wisconsin legislative reference library, in succession to the late Dr. Charles McCarthy.

Dr. Leo S. Rowe, president of the American Political Science Association in 1921, has been granted the honorary degree of doctor of laws by the University of Cuzco, Peru.

Professor W. B. Munro, of Harvard University, is on leave of absence during the second half-year and is spending some time in California.

Mr. R. N. Richardson, professor of history and government in Simmons College (Texas), is on leave of absence while completing his graduate work at the University of Texas.

Mr. Frederick D. Bramhall has been obliged to discontinue his work at the University of Chicago on account of a breakdown in health. His present address is Sun Mount Sanatorium, Sante Fé, New Mexico.



Mr. George C. Sikes, secretary of the Chicago Bureau of Public Efficiency, is giving Mr. Bramhall's course in municipal government at Chicago.

Professor Leonard D. White, of the University of Chicago, has recently completed for the National Research Council a survey of the scientific research activities of the various bureaus and agencies of the state of Illinois.

Professor Albert H. Washburn, of Dartmouth College, has been appointed minister to Austria and left about the first of April to take up his work. Professor Washburn was at one time a member of the consulate at Magdeburg, Germany. As a member of a New York City law firm, he has specialized in customs cases, and he is now president of the Customs Bar Association.

Professor David Lattimore, of Pei Yang University, Tientsin, China, has joined the Dartmouth faculty to give courses in Far Eastern civilization. He has been an instructor in various Chinese colleges since 1901 and an expert adviser to various government commissions in China.

Mrs. Frank Fearing, formerly instructor in political science at Vassar College, is acting as instructor at Stanford University during the spring quarter.

Professor Charles E. Merriam, of the University of Chicago, recently delivered an address at the University of Wisconsin, under the auspices of the department of political science, on the needs and problems of research in political science.

Professor Harold S. Quigley, who has spent the year teaching in one of the Chinese colleges, will resume his work at the University of Minnesota in September.

Professor O. Douglas Weeks, of Morningside College, will return to the University of Wisconsin next year to complete his graduate work.

Samuel P. Orth, Goldwin Smith professor of political science at Cornell University, died February 25 at Nice, France. After a serious automobile accident a year ago, a series of complications set in and eventually resulted in his death while beginning what was planned to be an extended tour for recuperation. Professor Orth was a graduate of Oberlin College and of the law school of the University of Michigan, and he received his doctor's degree in political science at Columbia in 1903. He practiced law at Cleveland for several years, and also served as president of the board of education in 1904-5 and as assistant district attorney in 1905-8. He became a professor at Cornell in 1912. Always interested in practical politics, he was chosen presidential elector in 1920, and at the time of his death was about to be nominated as a candidate for Congress to fill a vacancy in the 37th New York district. His principal publications are: *Centralization of Administration in Ohio*; *Five American Politicians*; *Socialism and Democracy in Europe*; *Readings on the Relation of Government to Industry*; and *The Boss and the Machine* (*Chronicles of America Series*). At the time of his death Professor Orth was a member of the executive council of the American Political Science Association.

In the "Notes on Municipal affairs" in the February number of the REVIEW, it was stated, in error, that the cities of Terre Haute and Muncie, Indiana, had elected as mayors men who had been convicted in the United States courts for offences in connection with elections. Two such men were nominated at the primary as candidates of their party for the office of mayor; but fortunately neither candidate was elected. It may also be noted that the statute under which one of these men was convicted has subsequently been declared invalid by the Supreme Court of the United States, in the Newberry case.

The annual meeting of the Ohio Academy of Social Sciences was held at Columbus at the middle of April. Professor B. A. Arneson, of Ohio Wesleyan University, presided over the sessions, and Professor W. J. Shepard, of Ohio State University, presented a paper on the movement for reform in local government.

The semi-annual meeting of the Academy of Political Science in the City of New York was held on April 28. The general topic was the railroads and business prosperity.

The American Academy of Political and Social Science holds its annual meeting at Philadelphia May 12-13. The general topic for consideration is the relation of America to the rehabilitation of Europe, one of the sessions being devoted especially to the relation of America to the European political situation.

The Institute for Government Research at Washington has published a booklet describing its varied activities and its publications. Copies may be had on application to the institute.

The third annual meeting of the Southwestern Political Science Association was held at the University of Oklahoma, March 23-25, 1922. One day's sessions were devoted to economic problems of the southwest, and other sessions were held under the auspices of the international relations section, the political science section, and the public law section. Officers for the ensuing year were chosen as follows: Judge C. B. Aimes, Oklahoma City, president; George B. Dealey, Dallas, Texas, F. F. Blachly, University of Oklahoma, and D. Y. Thomas, University of Arkansas, vice presidents; Frank Stewart, University of Texas, secretary-treasurer, and H. G. James, University of Texas, editor of publications. The fourth annual meeting will be held at Dallas in the spring of 1923.

The governing board of the Pan-American Union has authorized the holding of a Pan-American Conference at Santiago in March, 1923. This will be the fifth in the series of such conferences. The board will prepare the list of subjects to be discussed.

A National Council for the Social Studies completed its organization in Chicago on February 25. Its purpose is to lay the foundations for training democratic citizens; and its sponsors believe that such training can result only from a carefully developed and adequately supported system of teaching in the elementary and secondary schools. Its plan looks to promoting coöperation among those who are responsible for such training, including at least the university departments which contribute knowledge of facts and principles to civic education, and the leading groups of educational leaders, such as principals, superintendents, and professors of education, who develop the methods of handling these facts.

The following officers were elected for the year 1922-1923: L. C. Marshall, professor of economics in the University of Chicago, president; Henry Johnson, professor of history in Teachers College, vice-president; Edgar Dawson, professor of government in Hunter College, secretary-treasurer; E. U. Rugg, Lincoln School, New York, assistant secretary. An executive committee, charged with the general direction of the policies of the association will consist of the officers and the following additional members: C. A. Coulomb, district superintendent, Philadelphia; W. H. Hathaway, Riverside High School, Milwaukee; and Bessie L. Pierce, Iowa University High School.

An advisory board is being formed composed of members selected from: (1) scholars in subjects related to the purpose of the national council—historians, economists, political scientists, sociologists and geographers; (2) national organizations of educational administrators; and (3) regional associations of teachers of history and civics. The function of this advisory board is to bring into the national council the points of view represented and to insure the development of social studies in harmony with the best educational thought and based on the best present practice.

The first task which the national council is undertaking is the preparation of a finding list of those experiments in the teaching of the social studies which now give promise of being useful. This list will aim to make it possible for persons working along parallel lines to coöperate, and to indicate differences of opinion and program for purposes of analysis and discussion.

Those interested in the development of the social studies, whether teachers or others, are invited to communicate with the secretary at 671 Park Avenue, New York City.

James, Viscount Bryce, the well-known British publicist and author, and president of the American Political Science Association in the year 1908, died at Sidmouth, England on January 22, 1922, in his eighty-fourth year. Famed as a scholar, teacher and writer, in the varied fields of history, law, political affairs, and to some extent in natural science, and also well known as a public official and a traveller in many lands, he will be best remembered as a student and analyst of political institutions. His main field of work has been in the democratic governments of the later nineteenth century; and not the least of his contributions have been those relating to the government of the United States.

Third of his name in successive generations to be recognized as scholars and teachers, he had the background of an intellectual family inheritance. Born at Belfast May 10, 1838, he was educated at Edinburgh and the Universities of Glasgow, Oxford (A.B. 1862; D.C.L. 1870) and Heidelberg. He was an honorary fellow of Trinity and Oriel colleges at Oxford, and received honorary degrees from more than a score of universities in Great Britain, the United States, Germany and Australia. Admitted in 1867 as a barrister of Lincoln's Inn, he continued in practice until 1882. From 1870 to 1893 he was Regius Professor of Civil Law at the University of Oxford.

He was elected a member of Parliament from Tower Hamlets in 1880, and represented the Scottish burgh of Aberdeen from 1885 to 1907. He held a number of public offices: under secretary for foreign affairs, 1886; chancellor of the Duchy of Lancaster, 1892; president of the board of trade, 1894; chief secretary for Ireland, 1905; and ambassador to the United States from 1907 to 1913.

His extensive travels in all parts of the globe included the United States, Transcaucasia, South Africa, South America and Australia.

A voluminous writer in the many fields of his varied interests, his more important books form a considerable library. These include: *The Flora of the Island of Arran*, 1859; *The Holy Roman Empire*, 1862; *Report on the Conditions of Education in Lancashire*, 1867; *The Trade Marks Registration Act, with an Introduction and Notes on Trade Mark Law*, 1877; *Transcaucasia and Ararat*, 1877; *The American Commonwealth*, 1888; *Impressions of South Africa*, 1897; *Studies in History and Jurisprudence*, 1901; *Studies in Contemporary Biography*, 1903; *The Hindrances to Good Citizenship*, 1909; *South America: Observations and Impressions*, 1912; *University and Historical Addresses*, 1913; *Essays and Addresses in War Time*, 1918; *Modern Democracies*, 1921; *International Relations*, 1922; and *The Study of History*, 1922.

His works as historian, jurist, statesman and traveler, all show his fundamental interest in political institutions, and explain his appreciation of the relations between political problems and other fields. His most extensive and best known contributions are in the field of government. *The American Commonwealth* not only gave to British and European readers an adequate account of American institutions, but was of even greater value in this country in furnishing a broader basis for instruction and suggesting new fields of investigation. *Modern Democracies* forms the culmination of his lifelong studies, and presents the keen analysis and guarded conclusions of a sympathetic but candid observer of popular government.

In his address as president of the American Political Science Association, he stated his opinion that politics could be considered an experimental and a progressive science, but not an exact science, such as mathematics or mechanics, or even to the same degree as meteorology. Two suggestions to younger students throw light on his own methods: (1) "Keep close to the facts. Never lose yourself in abstraction." (2) "Make the treatment, I will not say popular, for that is sometimes taken to mean superficial, but at any rate attractive."

Bryce's contributions to political science form a prominent landmark in the development of this important branch of knowledge, and his works have done much, not only to improve the study and teaching of political institutions, but also to aid in improving the standards and methods of the political systems he has described. His work was that of a keen sighted observer, with a well trained mind and a broad knowledge of history, law and the physical facts of the world; and his studies were much more comprehensive than those of Darwin in collecting and analyzing the materials for his scientific discoveries. If these studies have led to no such fundamental principle as that of natural selection, this may be due to the more extensive scope or the greater complexity of the inquiry; or perhaps the student of politics has been more cautiously scientific than the biologist, in not committing himself to a hypothesis which later investigations might require to be subject to substantial modifications.

**University Center for Research in Washington.** A score of scholars, resident in Washington and representing practically all of the social studies, have associated themselves for the establishment and conduct of a University Center for Research, whose purpose is defined to be "to promote and facilitate research in archives, libraries, and other collections located in the District of Columbia, on the part of students in the graduate departments of American and foreign universities and of others." Control of the center is in a board of research advisers, organized in a committee of management and a series of technical divisions, of which five have thus far been established, i.e., political science, international law and diplomacy, history, economics, and statistics. Drs. L. S. Rowe and W. F. Willoughby represent political science on the committee of management and are in charge of the political science division, and Dr. Rowe and Dr. Paul S. Reinsch are, with others, in charge of the division of international law and diplo-

macy. The history and nature of the enterprise are set forth as follows by the founders:

The organization of the University Center for Research in Washington is the outcome of a movement originated in May, 1916, when representatives of the departments of history and political science in several of the larger universities met in conference at Columbia University and appointed a committee to formulate a plan for the establishment in Washington, through the coöperation of American universities, of a residential center for graduate students who should desire to conduct researches in the archives, libraries, and other collections of the national government. Such a plan was drawn up and was approved by a second conference of university representatives held in Cincinnati in December of the same year. The entrance of the United States into the war a few months later, however, made it necessary to postpone indefinitely the execution of the project.

In December, 1920, the American Historical Association and the American Political Science Association appointed a joint committee for the purpose of reviving the plan and of carrying it out with such modifications as might have become desirable because of changed conditions. As a result of the activities of this committee two conferences of scholars resident in Washington were held in the fall of 1921, at which articles of organization were adopted.

*Scope and Purpose.* The University Center for Research in Washington is maintained by a voluntary association of scholars, organized in a self-governing body styled the board of research advisers. Through its committee of management this board is in contact with the interests most concerned in the objects of the university center; the membership of the committee includes representatives of the American Council on Education, which is the organ of the various associations of American universities and colleges; of the American Council of Learned Societies, which represents organized scholarship in the humanistic fields of study; and of the National Research Council which, while chiefly representative of the physical and biological sciences, is also concerned with the organization of research in general.

The purpose of the university center is the promotion of research by rendering aid, information, and advice to graduate students and other investigators who desire to make use of the archives, libraries, and other collections in Washington. It is the hope of the board of research advisers that they may thus make more effective to scholarship the provisions of the act of Congress of March 3, 1901, namely:

That facilities for study and research in the government departments, the Library of Congress, the National Museum, the Zoological Park, the bureau of ethnology, the fish commission, the Botanic Gardens, and similar institutions hereafter established shall be afforded to scientific investigators and to duly qualified individuals, students, and graduates of institutions of learning in the several states and territories, as well as in the District of Columbia, under such rules and restrictions as the heads of the departments and bureaus mentioned may prescribe.

The activities of the university center are for the present limited to the fields of history, political science, economics and statistics, and international law and diplomacy. Eventually it may develop into a residential center for investigators in all fields of learning.

In its present form the university center represents the organization of a service rather than of an institution. For the rendering of this service the board of research advisers is organized in divisions each of which is composed of scholars who are qualified, by reason of their own researches, their familiarity with certain classes or groups of material, or their official positions, to render effective aid to investigators in certain fields of study. This aid takes the form of information respecting the location of desired material, assistance in securing access to it, and, in the case of graduate students, of advice respecting its utilization. It does not, however, include the giving of instruction, nor training in methods of investigation, nor supplying purely bibliographical information which should be available in any large library. It is assumed that graduate students who desire to work under the auspices of the university center will already have received the instruction and training necessary to qualify them for work of research, and that they shall have reached a stage in their work where recourse to the collections in Washington has become essential to its further prosecution.

*Opportunity for Research in Washington.* It is unnecessary to dwell at length on the opportunity for research in Washington. In those fields of study to which the service of the university center is for the present limited this opportunity is unequalled, as indeed it is also in many other fields. The administrative and technical archives of the various services of the federal government are indispensable to the student of American history and politics. The collections of the library of Congress, especially in its divisions of manuscripts and public documents cannot be duplicated, and there are numerous



smaller libraries, such as those of the department of state, of the department of commerce, and of the department of labor, to mention only a few, which contain material specially collected and not readily available elsewhere. The location in Washington of such institutions or organizations as the Institute for Government Research, the Carnegie Endowment for International Peace, the American Society of International Law, the United States Chamber of Commerce, the Bureau of Railway Economics, the Carnegie Institution with its department of historical research, and the American Historical Association, as well as the remarkable extension during the last two decades of economic and statistical research within the government services have made the capital one of the most important centers in the United States for work in the social studies.

*Regulations of the University Center.* The university center is now ready to offer to investigators the services described above. It should be understood that access to governmental collections, especially to administrative archives, is subject to official regulation or discretion and cannot be assumed. For this reason advance correspondence with respect to proposed investigations is desirable. The services of the university center are rendered without charge or fee, subject to the following conditions:

I. Each student desiring to work in Washington under the auspices of the university center, must make direct application by letter to the secretary, stating briefly the subject of his investigation, the stage reached in it at the time of making application, and as definitely as possible the nature of the work which he proposes to do in Washington. This application must be accompanied by a statement from the dean of the school in which the student is enrolled to the effect that the proposed work in Washington is undertaken with the approval of the competent university authorities. It should also, if possible, be accompanied by a letter from the officer of instruction under whose direction the student is conducting his investigation, containing such information about the work as may be useful to the technical division of the board of research advisers to which the student may be assigned. Upon arrival in Washington the student must register at the office of the secretary, and must then call upon the member of the board of advisers to whom he shall have been referred. Advisers will keep a record of the work of students assigned to them and will make a report thereon to the secretary. A copy of the report on the work of each student will be sent to the dean of the school from which he comes.

11. Students in foreign universities and other investigators who desire to avail themselves of the services of the university center should make application by letter to the secretary, stating the nature of the work which they propose to do in Washington. Upon arrival they should register at the office of the secretary and will be referred to the appropriate member of the board of research advisers. No record will be kept of their work nor will any report be made on it.

**Political Research.**<sup>1</sup> Last year in a paper entitled "The Present State of the Study of Politics" I undertook to discuss some fundamental aspects of the scientific study of government. Further consideration will be given here to some of the vital problems of political research.

It seems appropriate to begin with the personal equipment of the professional students of politics. We may ask, is the modern equipment of students of government superior to that of the earlier days? Is our equipment abreast of the mechanical opportunities and the organization facilities of our time? For some time I had thought of Aristotle as working alone, but recently I found a statement to the effect that the Greek philosopher had under him scores of men who scoured all of the countries of the world for political information to be placed at his disposal. In view of the fact that Aristotle was the teacher of no less a personage than Alexander the Great, it is conceivable that he may have had a sufficient influence with his powerful pupil to bring this about. In this respect none of us is as well off as was Aristotle.

Certainly we cannot contend that the students of politics are as well equipped for purposes of inquiry as the mechanical and organizing tendencies of the time would warrant. In these days of the improvement of means of communication and of efficient organization of means of collecting facts, we have fallen behind the possibilities of our times, and that by a very long interval. Our libraries are fortunately large and well-equipped as a rule, but not all of the material necessary for the student is found within the walls of the library.

Richard S. Childs has recently criticised the students of political science for the lack of detailed studies of the practical workings of governmental operations; and his criticism although overdrawn should be taken very seriously. Field work is not a luxury, but a prime necessity in the study of government. But, as he himself explains, professors are seldom overpaid and they do not have the funds necessary for

<sup>1</sup> This is a condensed statement of the discussion of the subject at the Pittsburgh meeting of the American Political Science Association, in December, 1921.

traveling and for observation in leisure time. Secretarial, stenographic assistance, trained helpers are also lacking as a rule, and this adds to the difficulty of the research man in the field of politics. In funds for field work and in the services of assistants and helpers we have fallen behind our brethren in the laboratories and in that field of work known as natural science; and what is more we have fallen behind the possibilities and needs of our day. Unless we can develop personal equipment superior to that now commonly found, our progress will be very seriously hindered.

There exists a pressing need for better facilities in the way of digests and analyses of laws, ordinances and administrative acts. At present the collection of this material is haphazard in the extreme, and follows no settled plan. How do we learn about the laws of the various states or the ordinances of our many cities? Only by writing personally in the main, thus duplicating effort and obtaining incomplete results in many cases. In the reporting of legal decisions, the whole process is admirably organized, and the practicing lawyer finds on his desk in very short time all of the very latest cases. But not so the unfortunate student of commission government, or the primary system, or the development of the budget. He must find his material as best he can, relying on scattered agencies and supplementing their activities with his own. Crop reporting has been reduced to an art and the latest information obtained by highly skilled observers, scouring a thousand fields, is wired at once around the world. If one-tenth of the amount spent on crop reporting were expended on information about the great crop of political facts, how fortunate we should consider ourselves. But in the case of the lawyer's decisions and of the grain prospects there is a direct commercial motive, while in the case of political information there is no such direct result in sight. Indirectly, what tremendous possibilities are involved in the accurate observation of the outcome of human experiments such as are now going on in many parts of our country and of the world.

Not only does this observation apply to the gathering of laws and official acts, but still more to the observation of political phenomena. For this purpose a staff of well-trained observers, with objective point of view, keen insight and balanced judgment, is needed, in order that the student may receive their reports and from them glean the tendencies and directions of the phenomena of the day; and learn also of the general laws and principles involved in these processes. The failure to do this field-work—to collect these facts at the time the events occur—is one of the very weakest spots in the present-day organ-

ization of political inquiry. While scientific expeditions are being equipped to cover all parts of the world and for all sorts of objects, the tremendous human experiment of democracy going on before our very eyes is not subjected to any process of scientific observation at all adequate to the needs of the occasion, and to the scientific possibilities in the case. It is imperatively necessary to find funds for this purpose, if intelligence is to play its proper rôle in the conduct of human affairs.

But there are questions of political research that go deeper down than the personal equipment of the investigator, important as that is, or the inadequacy of the fact-collecting machinery, defective as that may be. To what extent are we advancing in the technique of inquiry? Are we progressing in range of observation, in accuracy of observation, and are we moving in the direction of scientific inference and deduction from the observations made? Professor Robinson has raised the question why Aristotle's natural science is so far out of date while his social science is still quoted with some respect. Is this due, he asks, to the fact that Aristotle in his social science so far outstripped natural science that the latter is just now catching up, or is it due to the fact that we have not progressed as rapidly as might be in the field of social sciences? He inclines to the latter answer.

Politics to a great extent has been the rationalization of group disciplines, prejudices, hopes, depending from time to time on the vicissitudes of the group. Latterly, politics has become more historical and descriptive in character, but still deeply tinged with the propaganda of the writer's favored group. The complicated relations of politics and of the social sciences have thus far baffled the efforts of the investigators to reach the inner secrets, which mother nature in so many other cases has been obliged to yield, unwillingly it seemed, to the relentless pursuit of tireless investigators.

Is politics making use of all the advances in human intelligence which the social or natural sciences have brought into the world in the last few generations? Astronomy, chemistry, physics, biology, and in later days psychology, have made rapid progress—so swift indeed that we are apt to find difficulty in keeping pace with a procession where the fundamental categories of time and space are challenged, and the atom, the ion, the electron, throw the whole material world into a flux where all seemed stable and known. Ethnology, anthropology, social psychology, geography, archaeology, are all busy with their masses of material, with new insights and with new light on human nature.

Politics has need of the eyes of Argus to see all that is happening within or near its own domain. Are we really keeping pace with these new developments? How effectively are we using human intelligence in the struggle to direct the common affairs of our swift-rushing world. It may be questioned whether knowledge of juristic methods alone and of the external forms of government is adequate to cover the case. Aristotle certainly wove the science of his day into his political thinking. If we go back to John Locke, the great apostle of the English Revolution, whose doctrines to a large extent are still the foundation of the political thinking of the Anglo-Saxon peoples, we find that he was a philosopher, an educator, a physician by training, an anthropologist in the sense that he was abreast of the developments of his day, according to Myres in his *Influence of Anthropology on the Course of Political Science*. With this background, he was able to make an effective interpretation of the political thinking of his time, although the scientific aspects of his work are secondary.

Particularly we may ask whether we are sufficiently in touch with such practical groups of workers as the psychologists and the engineers. It has been said that the country will be governed and the political science written by these groups. If they can improve existing conditions, God speed them. But perhaps we have something to offer them as well as to receive from them. Perhaps in the union of these different disciplines will be found the most fruitful combination. Perhaps from these different elements in successful reorganization will come the political science of the future in which the intelligence of the time may be more successfully applied to the control of our common affairs.

It is worth raising the question whether we are doing all that is possible to keep the social sciences abreast of the rapidly moving times in which we live. In the evolution of science it may well be that exact knowledge of human relations may come last, waiting upon the development of seemingly less intricate relations; but that, if true, would not constitute an adequate reason for lagging too far in the rear. Indeed it is not demonstrable that political behavior is really more complex than the atom, once regarded as simple but now appearing to be a miniature cosmos in itself. A few weeks ago I listened to a discussion by a mathematician in which he outlined the process by means of which a number of scientific discoveries had been made. Some two hundred of these he had traced through, although he did not favor us with all of them. It was a fascinating study of the

application of human intelligence. Of course one science need not and cannot slavishly follow all the methods of another. Mathematics, physics, chemistry, biology, psychology, all work out their own salvation. But important insights and suggestions may often be derived by comparison of various processes of observation and inference. Of special interest and value are the ways in which instruments for precise measurement have been devised by the human intelligence and applied to the needs of the various arts and sciences, thus furnishing comparable data for the use of various students. The microscope, the telescope, the spectroscope, did not spring full-armed from the brain of the first investigator who caught the idea, but on the contrary were the products of long and painful processes of experimentation, often seemingly futile and barren for long periods of time. When something like exact measurement of recurring processes begins, we are on the way to exact knowledge, to scientific verifiable inference. It is natural to inquire to what extent the process has been applied to the study of political behavior.

Possibly it might be useful to survey a generation of political thought and observe what progress has been made during that time. What new discoveries, inventions, improvements in method have been made during the given time? What advances were made in the next preceding period and so on, tracing in detail the evolution of the progress in intelligence in the field of social, or in our case of political, relations. Perhaps a recapitulation or résumé of advances in fact, method and principle, with a forecast of the next steps, might be of value to the professional students of government. At any rate, it would be interesting to see such a survey made for the last thirty and the next preceding thirty years. It might help us to get behind the external framework of government into the vital forces within these forms—the processes which recur without as much variation as appears in the outer forms or shells of political life.

Without attempting to survey the field systematically, of course impossible in the brief limits of this informal discussion, it might be worth while to speak of a few special types of inquiries in the political field.

We might consider the scientific study of citizenship. In one of my courses I have found it useful to inquire into the genesis of political opinions and attitudes, into the circumstances under which they are developed; how they come and how they go. Incidentally it appears that most political opinions are fixed long before students arrive at

the gates of the university, and these opinions are changed or modified only with the greatest difficulty. From one point of view, the teaching of citizenship may be a form of group discipline or propaganda; but it has also its scientific aspects, especially when various groups are compared. We may well ask what are the specific qualities of citizenship which it is proposed to teach; whether there is a standard of "good" citizenship upon which in a given group there is a general agreement. We may ask what are the requisites of citizenship? Do they relate to information, to investigation, to judgment-formation, as to persons and policies; to selfish and social types of reactions? What are the obstacles to "efficient" citizenship? Are they physical, psychical, social or economic? Can these obstructions be located and diagnosed, and can they be measurably trained and controlled? Can scientific politics help at this point by showing the constantly recurring processes by means of which political attitudes and characteristics are determined and how they may be modified? These are points at which the scientific development of political inquiry might be of the very greatest political service, and where the collateral inquiries should add to the store of human information regarding the political characteristics and behavior of mankind.

Among more mature citizens might not a study be made not only of the extent of non-voting, but of the motivation of voting and non-voting; of the characteristics and limits of "political" interests; of the means of developing and controlling such interests? Would it not be of great value in scientific and the practical understanding of the body politic? Can we diagnose the reasons why twenty-nine of fifty-four million adult American citizens did not vote at the last presidential election? And if so, can we prescribe anything that will help the patient?

In a much larger field would it not be possible with the aid of the psychologist to ascertain with some degree of accuracy the political and social characteristics of the several nationalistic groups? What is an Englishman, a Japanese, a German, a Frenchman, an Italian, an American, politically? Are there characteristic differences which are measurable? Are there broader differences which are measurable? Are there broader differences between individuals within these groups than between the groups themselves? How far are these attitudes or characteristics or predispositions in the nature of biological inheritances, and how far are they handed down by the groups as part of the training and education of the members of the group? To what

extent if any, are these qualities capable of modification and control and by what means? These are subjects of fascinating interest and also of fundamental importance to human welfare in our time. What has politics to say on these vital facts which underly the diplomacy and war of our time and of all times? What have we to say of the possibilities of enthroning intelligence where hatred, prejudice and passion now hold sway? Would it not be worth while for students of politics to set in motion a course of inquiry which technicians of other groups might perhaps be called upon to complete, or to cover with us in a large spirit of coöperation?

In these scattering and informal remarks I have covered a variety of topics in a fragmentary way, throwing out suggestions as becomes a puzzled searcher for truth, rather than presenting conclusions. But permit me to emphasize again the chief points I had hoped to develop, namely: the significance of the adequate equipment of the professional research man; the grave necessity of constant revision of our methods and processes; the desirability of more intimate coöperation with other social sciences and with the physical sciences; and finally, the urgent need of going back of external forms and descriptions to the recurring processes of politics, whose sequence we may some day hope to calculate and measure more accurately than we have thus far been able to do; the desirability of minute, thorough, patient, intensive studies of the detail of political phenomena, by many devoted investigators who will supplement keen observation with shrewd inference and open the way to a deeper and more scientific understanding of political relations.

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## BOOK REVIEWS

EDITED BY W. B. MUNRO

*Harvard University*

*Contribution à la Théorie Générale de l'Etat spécialement d'après les Données fournies par le Droit Constitutionnel français.* Par R. CARRÉ DE MALBERG. Tome premier, 1920. Pp. xxxvi, 837. Tome deuxième. 1922. Pp. xiv, 638. Paris. Librairie de la Société du Recueil Sirey, Léon Tenin.

These two substantial volumes constitute installments of a monumental treatise on the general theory of the state, by Professor Carré de Malberg of the University of Strasbourg. In the first volume he considers the constituent elements of the state (with chapters on the theory of the personality of the state and the power of the state) and the functions of the state. In the second volume, he concludes his analysis of state functions with an extended discussion of the separation of powers; and, under the general heading of the organs of the state, considers contemporary theories of the source of the powers exercised by state organs, representative government, the office and rôle of the electorate, and the organization of the constituent power in France.

As the title of the work indicates, the author restricts himself mainly to a study of French theory, and deals with the legal and political doctrines of other states, only for purposes of comparison and illustration. As an exposition of French theory, his treatise will constitute the most elaborate and thorough-going study that has been made; and students of political science owe the author a debt of gratitude for a work of such scope and merit. It is to be hoped that the other volumes will appear in the same rapid succession as the second has followed the first.

In the first chapter, he emphasizes the unity of the state, and discusses the foundation of this unity and the origin of the state. In the second chapter, he maintains that sovereignty is incapable of legal limitation, but is subject to moral restrictions, self-imposed on the organs of the state by the law which creates them.

The functions of the state are classified under the three main categories of legislation, administration and jurisdiction, but discussing these in the light of the views of French and German writers, he distinguishes between formal and material functions. This distinction recognizes that what is in substance a legislative rule may be issued in the form of an administrative regulation.

Distinguishing several phases of the doctrine of the separation of powers, he holds: that the conception of a plurality of distinct powers is inconsistent with the essential unity of the state; that an organic separation of functions is impossible; that a complete independence of organs is impracticable; and that the equality of organs is legally impossible—there may well be a multiplicity of organs, but normally one will be preponderant. Thus in the parliamentary system, while nominally based on a dualism of powers, its institutions and tendencies lead to the preponderance of one of the two authorities. In the present system of French public law, he holds that the separation of powers has been replaced by a gradation of powers, in which the parliamentary chambers constitute the supreme organ; but that its power is also limited by the electorate.

In discussing the sources of the power of state organs, the author distinguishes between what he calls the "sovereignty of the people" and "national sovereignty." The first theory was that of Rousseau, which as the author interprets it, attributes to each individual a fraction of sovereign power. This theory which is rejected on various juridical grounds, is contrasted with the theory of positive French law, which locates the sovereign power in the nation, that is in the collectivity of citizens viewed as an indivisible unit. It does not rest in the electorate alone but in the whole body of citizens. Naturally, he does not share the opinion of Duguit that the "principle of national sovereignty is a fiction, undemonstrable and of no real value."

In his treatment of representative government, the author considers the current theories concerning the rôle of the representative according to French law. He emphatically rejects the theory of the *mandat impératif*, and holds that the deputy is not the agent of his immediate constituency and subject to their instructions, but is the representative of the nation, bound only by his own judgment and conscience, and independent of the electors to whom he owes his election. This has been the principle of French positive law since 1789. Nevertheless, he admits that in the evolution of the representative system in France the electors have come to exercise, in fact, an increasing influence and

control over the deputies. The French people are no longer content to play the *rôle effacé* to which the earlier constitutions limited them, to demand of a deputy that he regard himself as exclusively the representative of the nation is to demand the impossible, and a candidate who should present himself to the electors on such a platform would be defeated. The deputy therefore, has become in fact more or less the representative of the particular interests of his own immediate constituency. Indeed it would not be going too far to say that the French deputy today regards himself as primarily the agent of the district which elects him; and it was largely to remedy this situation that the system of *scrutin de liste* was introduced in 1919. M. Carré de Malberg himself concludes that the representative system which has come to exist in France is contrary to that which the founders intended and that it is a "bastard form of government," consisting of a combination of that which the revolutionists created and of modern parliamentarism. As to the nature of the suffrage, he adopts the view that it is "successively" an individual right and an office (*fonction*), although he takes issue with Duguit who maintains that it can be both at the same time.

The second volume concludes with a discussion of the nature of the constituent power in France. The principle of national sovereignty, the author maintains, logically requires that the constituent power should be vested in a special organ, although the constitution of 1875, unlike its Republican prototypes, does not fully carry out this principle. In vesting the constituent power in a national assembly composed of the members of the legislative body, the authors of the present constitution adopted a compromise between the English system and the French practice before 1875. As to the somewhat subtle question whether the national assembly is a mere meeting of the Chamber of Deputies and the Senate or whether, as Duguit maintains, it is a new assembly absolutely distinct from the Parliament, the author adopts a middle view. Concerning the much controverted question whether the national assembly has an unlimited competence in respect to the revision of the constitution, he takes issue with Duguit who supports the theory of unrestricted competence. His own conclusion is, and it seems to the reviewer to be more in accord with the constitution, that the unlimited competence of the assembly is conditioned upon the separate wills of the chambers expressed in the resolutions convoking the meeting of the assembly.

JAMES W. GARNER.

*University of Illinois.*

*The American Philosophy of Government, Essays.* By ALPHEUS HENRY SNOW. (New York: G. P. Putnam's Sons. 1921. Pp. 485.)

Whoever is responsible for having brought together this collection of essays by the late Alpheus Henry Snow, deserves the assurance that he did a very serviceable thing. While some of the papers were works of occasion, all reflect so philosophical an outlook and rest upon such solid foundations of learning as to possess much of permanent value, not only to the student of the law of nations, in which Mr. Snow was particularly interested, but to all students of American political ideas and institutions.

The title of the opening essay, "The American Philosophy of Government and its Effect on International Relations," sounds the keynote of several others of the papers, and, indeed, furnishes the volume as a whole with a unifying *leit motif*. Mr. Snow was thoroughly convinced of the feasibility, or better, the indispensability, of basing the international order, if it was to serve the cause of human liberty, upon the leading concepts of American political theory—federalism, the notion of the state as a corporation with limited powers, the correlative notion of a "higher law" and of fundamental rights safeguarded thereby, the doctrine of the separation of powers, and confidence in judicial processes; and generally he argued, that except so far as commonly accepted ideas of justice are available as a foundation for international organization, national freedom and independence should still be jealously conserved, and especially by those nations which believe in limited government and individual liberty.

As may be surmised, Mr. Snow did not regard the Covenant of the League of Nations with favor. It provided, he argued, no limitations or safeguards upon the exercise of power by the league; it bound member states to follow "advice" which in certain contingencies could amount to absolute commands; it defined aggression and wrongdoing purely in terms of warlike action, regardless of its purpose; it mingled all varieties of functions in a single body—in short, it sprang from the European concept of unlimited power and rejected the American idea of limited power. Indeed, he challenged the constitutional competence of the treaty-making body to "enter into a treaty of union having the effect to supersede in part the Constitution of the United States" (p. 306).

Of the non-controversial papers, the one tracing "The Development of the American Doctrine of Jurisdiction of Courts over States," the companion study entitled "Execution of Judgments in Jurist States," the essay on "The Position of the Judiciary in the United States," and that on "The Proposed Codification of International Law" are of chief value. In the last named, incidentally, is an outline of the entire subject of the international law of peace which might well furnish a basis for a course of lectures along quite novel lines.

In all respects the volume is a fitting memorial of its regretted author.

EDWARD S. CORWIN.

*Princeton University.*

*The Spirit of the Common Law.* By ROSCOE POUND. (Boston: The Marshall Jones Company. 1921. Pp. xv, 224.)

In these eight lectures, Dean Pound traces the ideas that have played a part in the development of the common law and outlines the emerging attitude of the twentieth century and its promise for the future. His picture of the past is a marvelously wrought intellectual tapestry made from the threads that dynasties of judges, jurists and philosophers have spun. Thus the spirit of the common law is found chiefly in the professions of its votaries. This tends to leave the impression that men actually were controlled by the abstractions and the absolutes that they chanted. Yet in the later lectures the author, who is as acute as he is learned, makes plain that in spite of professed devotion to fixed ideals and universal principles, the judges have felt their way, made compromises, and tested principles by their fruits. The jurists of today, he tells us, "call for a legal history which is to show us how the law of the past grew out of social, economic and psychological conditions, how it accommodated itself to them, and how far we may proceed upon that law as a basis, or in disregard of it, with well-grounded expectations of producing the results desired."

This is a large program. In these lectures, Dean Pound deals chiefly with the conditions that may be termed psychological or philosophical. He emphasizes their potency while he reveals their inadequacy. His historical retrospect is, not only a significant contribution to the history of legal and political theory, but a powerful lever in the advocacy of that newer attitude of which he is the leading exponent—the attitude which puts "the emphasis upon social interests" and which looks at the rules and premises of the legal system "in terms of the

concrete situation, not in terms of the abstract claims of abstract human beings." This attitude is fortunate in having for its leader a man of learning as well as of wisdom. This happy union gives these lectures a double value. They squelch the shallow railings of ignorant critics who would divorce the present from the past and they offer wise guidance to those who would build on the past and the present to make a better future.

THOMAS REED POWELL.

*Columbia University.*

*Intervention in International Law.* By ELLERY C. STOWELL.  
(Washington: John Byrne and Company. 1921. Pp. vi, 558.)

In a concise, but clear preface, Mr. Stowell gives us the objects of his investigation, which deals with some of the most important contemporary problems of international law. For instance, he tries to answer the difficult question as to when a state may be justified in employing force or the menace of force to influence the conduct of another state. In analyzing modern conditions, he constantly keeps in mind the ideals of democracy. From that latter point of view he arrives at the conclusion that selfish insistence or absolute independence of action of a state do not justify interference with a neighbor; no state, he says, shall unreasonably insist upon its rights or pursue its interests to the detriment of other states.

Unfortunately the domain of international relations is so full of old prejudices, perverted ideas, and moral conflicts, that the author sometimes finds it difficult to blaze a clear trail and leaves some questions unanswered, but this does not in any way detract from the good impression created by the reading of his book. The chief criticism one might make is the fact that the author in places treats his subject, especially the historical examples, at too great length. This is the case, for instance, with the Putumazo atrocities and the Polish insurrections; in reading the corresponding pages one might think the author were writing a history of Peru or of Poland.

The best parts of the book are the first two chapters, on "Interposition" and "International Police," though the latter title is unfortunately chosen and calls for special explanation. The author gives clear and acceptable definitions of redress, expiation and punishment; in some cases, however, the foreign names are hopelessly misspelled

(the Russian Ambassador Matvejev is quite unrecognizable; p. 28). Humanitarian intervention takes up the greatest part of chapter II and is most interestingly treated.

The author is quite right in emphasizing the conflict of ideas that could be found in former days between the theory of state sovereignty and independence and the principles of humanitarian intervention; he gives excellent examples of oppression, injustice, asylum and slave trade that repeatedly justified intervention and helped the latter to curb the selfishness of states. These pages will always remain a valuable contribution to the history of international relations. In one case only must we point out a glaring exception, standing in contradiction to the author's own humanitarian views and theories, namely his attempt to justify President Roosevelt's action in Panama; the arguments and assertions of Mr. Stowell are difficult to follow.

In the next chapter, on "Non-Interference," we find too much vagueness in some definitions, though this is really not the author's fault; the subject is so complex, so involved and some points are so disputable, that one could hardly expect clear-cut and dry definitions; the questions of mobilizations and concentrations, for instance, are so imponderable that it would seem quite impossible to compress them into juridical formulas. The same must be said of "Self-Preservation" and of the "Balance of Powers," where numerous disputable theories and statements are discussed by the author. The last paragraphs on conquest, treaty-rights and political action are very good.

On the whole the treatise is very interesting, stimulating and inspiring, will certainly take a permanent place in the literature of international law and will always remain a helpful source of information for students and specialists.

S. A. KORFF.

Washington, D. C.

*International Law: Chiefly as Interpreted and Applied by the United States.* By CHARLES CHENEY HYDE. Two volumes. (Boston: Little, Brown and Company. 1922. Vol. I, pp. lix, 832; Vol. II, pp. 924.)

The title indicates Professor Hyde's purpose, to limit his treatment of the subject of international law somewhat as did Professor Moore in basing his *Digest of International Law* chiefly upon American material. Professor Hyde has no intention, however, to maintain, as some writers

have endeavored to do, that there is an American international law, but in these volumes he aims rather to give the American material a "thorough examination and critical analysis." This is one of the peculiarly valuable features of Professor Hyde's work. He says (I, sec. 257): "While the individual State may not lawfully by legislative enactment modify the requirements of international law it may without impropriety express its own view as to what they demand, and in so doing announce a rule for the guidance of the courts."

Professor Hyde's presentation of the subject has been with a view to impartial elucidation of each topic treated, in order that his criticisms, favorable or unfavorable, may be tested by the reader. The recent activities of the League of Nations and of other new agencies in international relations are presented in this manner throughout the two volumes.

The source material indicated in the footnotes and elsewhere is always ample and recent and, while chiefly, is by no means always American. The international bearing of recent events in which the United States has been concerned, such as the Tampico incident, 1914; the pursuit of Villa, 1916; the relations of the Dominican Republic; the late doctrines of contraband, freedom of speech and the like are considered. In some of the more abstract discussions, such as that on the subject of servitudes, Professor Hyde shows where certain writers have failed in a clear understanding of the mutual and general obligations of states. The application of the Treaty of Versailles with its many ramifications is set forth. More than usual attention is given to conflicts arising in regard to the rights and duties of aliens and alien claims. Consideration is also given to the subject of reparations, which has grown in importance through the reluctance to use the word indemnities.

Events and practices of the World War are cited in many instances as showing the strain upon existing treaties, the extension of belligerent rights, and the introduction of other new problems.

In a work of this extent and detail, where a writer sets forth clearly his opinions, there will necessarily be views expressed upon which not all will agree. Professor Hyde has not endeavored to conceal this fact but has stated his own opinion and has endeavored to call attention to the divergence from the opinion of others and sometimes from the American practice.

Serious study, wide research and carefully reasoned conclusions are evident throughout this work, and all students are under deep obli-



gation to Professor Hyde for this scholarly contribution to the field of international law.

GEORGE GRAFTON WILSON.

*Harvard University.*

*Leading American Treaties.* By CHARLES E. HILL. (New York: The Macmillan Company. 1922. Pp. 399.)

Fifteen of the leading American treaties are examined in detail in this volume; their historical setting is presented, and their chief provisions analyzed. References in the text are for the most part to original sources, but each chapter is supplemented with a bibliography in which secondary sources as well as original documents are given. American state papers are freely drawn upon, as well as the annals of Congress, congressional documents, and diplomatic memoirs.

It is of interest to note how many questions of international law are interwoven with the provisions of the treaties discussed. A very practical and concrete, if somewhat restricted, course on international law might be given on the issues involved in these treaties. The problem of premature recognition of independence finds expression in the treaties with France in 1778; the problem of servitudes figures in the treaties of 1783 and 1818; the problem of the determination of boundaries, the rights of commerce, and belligerent interference with neutral trade, are issues of the Jay treaty of 1794; the right of succession might be discussed in connection with the Louisiana Purchase; neutral rights against belligerents are illustrated by the events leading up to the treaty of 1814; the character of occupation as a title to territory is seen in the treaty of 1842; belligerent rights against neutrals figure in the treaty of 1871; while problems of intervention, of international servitudes, and of the technical interpretation of treaty agreements are illustrated in the Panama Canal treaties.

While it might, perhaps, be wished that greater stress had been laid upon these points of law in the discussion of the various treaties, the student of diplomacy and international procedure will welcome in the present volume the details given in regard to the steps in the negotiation of the treaties and the practical results accomplished by them. The work should prove useful not only as supplementary reading in courses on general American history where source material is not available, but it should be of special help in the courses now being widely given in the diplomatic history of the United States.

C. G. FENWICK.

*Bryn Mawr College.*

*China, The United States and the Anglo-Japanese Alliance.* By G. ZAY WOOD. (New York: Fleming H. Revell Company. 1921. Pp. 176.)

*The Twenty-one Demands: Japan versus China.* By G. ZAY WOOD. (New York: Fleming H. Revell Company. 1921. Pp. 178).

*The Chino-Japanese Treaties of May 25th, 1915.* By G. ZAY WOOD. (New York: Fleming H. Revell Company. 1921. Pp. 151).

Whatever the Washington Conference may have accomplished or may have failed to accomplish toward an eventual solution of Pacific and Far Eastern matters, the appearance of these questions on the agenda created a sudden popular demand for information as to the nature and origin of such problems, and the extent to which they affected or might affect American interests. Mr. Wood's three volumes are, in part, an attempt to meet this demand; for the rest, they are a presentation of China's case, especially as against Japan, for the restoration of her sovereign rights.

In regard to the Anglo-Japanese Alliance, it is argued that the pact has, in the past, served as a cloak to repeated attacks upon China's sovereignty and territorial integrity, as well as to violations of the open door policy; that the two signatory powers gratuitously assumed the task of protecting for the other nations their treaty rights in China, thus arrogating to themselves unwarranted authority; and, finally, that the alliance has been, for twenty years, an influence for war rather than for peace in the Far East.

The other two volumes deal with the sequence of events culminating in the treaties and supplementary notes of May 25, 1915. There may have been good reasons for discussing the negotiations and the treaties under separate titles, but this division of what is essentially one subject has resulted in sharing between two appendices material which would have been much more useful in one.

Although the books may influence popular opinion and help to satisfy the momentary demand for information as to recent events in the Far East, they can hardly be considered as a presentation of new material. Quotation marks are frequently employed with no indication as to the source quoted; where references are given they are usually to newspaper reports and opinions; and, in one instance (*Anglo-Japanese Alliance*, p. 26), an ill-advised confidence in the reliability of a news-

paper interview has resulted in a footnote containing a glaringly inaccurate explanation as to the origin of the alliance.

G. NYE STEIGER.

*Simmons College.*

*The Struggle for Power in Europe, 1917-1921.* By Dr. L. HADEN GUEST. (London: Hodder and Stoughton. 1921. Pp. 318.)

The author has given us a survey deserving, on the whole, careful reading. He treats of economic, social, and political conditions in Russia and in certain countries of Central and Southeastern Europe (one wonders why Bulgaria is included since Yugoslavia is not) from the point of view of a physician with a special sympathy for down-trodden people of all nations. On this account, it may not be strange that in regard to certain political and international relations, the author is uncertain and vague, that for instance he states that the boundaries of Hungary ought to be changed "into closer accord with the rights and necessities of all people concerned" (p. 209) without specifying which of her boundaries he means or giving reasons for an adjustment or instances of any infringement of her rights.

He sees in the rise of the peasants and the working people of the towns the two forces which are to bring a real democracy into being, though for this there is urgent need for peace, education, adequate feeding, and, as leaders, men who are scientifically trained. Progress along these lines he finds most pronounced in Czechoslovakia and Bulgaria. His solution for other difficulties lies in an economic federation of European states which will not interfere with their independent political life, and he bases the belief that this may come about upon the existence of trade unions, relief organizations, and the League of Nations. The three chapters devoted to general observations are more definite and usefully analytical than those dealing with the separate countries (Russia, Poland, "Tcheko"-Slovakia, Austria, Hungary, Roumania, and Bulgaria), since the latter tend to gossip and develop sundry ideas unevenly.

The book has a detailed table of contents and two maps, one of the vegetation and the other of the manufactures of Europe. There is no index.

ARTHUR I. ANDREWS.

*Tufts College.*

*Mexico and its Reconstruction.* By CHESTER LLOYD JONES.  
(New York: D. Appleton and Company. 1921. Pp. x, 330.)

In the judgment of the reviewer, Dr. Jones has done the best single book dealing with the Mexican problem in general. It is for the serious-minded reader and is not intended to be a popular message. He has given us a clear statement of what the real Mexican problem is—if, indeed, there is such a thing as a Mexican problem.

In a phrase, the Mexican state is an anomalous one and exists by virtue of the forbearance of the greater nations. The country is lacking in nearly all the essential elements which go to make up a real state in the true modern significance. Seventy-five per cent of its people belong in the period of the Phoenician and the nomadic freebooter. Dr. Jones has shown characteristically enough that only the smallest possible percentage of Mexicans is qualified to support a modern political state. The inertness of the majority of the population, mostly Indian, is emphasized, as well as the fickleness and dislike of work on the part of the mixed bloods; and finally the rivalries and lack of coöperation existing among the members of the topmost layer is pictured—all accounting for the possession by the Mexicans of the outline of a democracy along republican lines, and its degeneration into single executive control, or a paternalism which reached its height under Diaz.

The author's discussion of "Loans," "Claims," "Currency in the Banks" and "Public Income and Expenditure" comprises an important section of the book. He has given the essential facts, and but for the statement (note 2, p. 67) that the figures were in Mexican gold, one could not take exception to his data. As a matter of fact, the Mexican peso until 1905 had legally the intrinsic value of the American dollar, but it was subject of course to fluctuations in the markets.

One of the best sections of the book is undoubtedly that dealing with the people as a whole. The study of the labor problem is a clear exposition and at the same time a dismal forecast. Another important section of the book, and one upon which Dr. Jones is by right entitled to speak with authority, is that of "Industry" and "Commerce," and the two chapters dealing particularly with "Foreign Trade" have unusual merit. The whole story is told graphically and briefly. His discussion of "Foreigners' Property" is not so satisfactory; as a matter of fact no discussion of foreign investments could at this time be satisfactory, because the data is so indeterminate that more or less specula-

tion must be indulged in. His estimate as to losses and as to the investments of foreigners are in both cases, in our judgment, conservative (p. 247).

The legal difficulties in the oil situation are gone into somewhat elaborately, and the reader can gather a good understanding of this problem, which has been agitating international relations probably more than any other single factor. Considerable space is devoted to "Government" and "Elections," and divers other problems are considered, all emphasizing the fundamental weaknesses in character of the majority of the inhabitants of Mexico, and making the case of the author appear that no independent improvements may be expected for a long period of time. Dr. Jones does not advocate outright any particular form of action which should be taken, nor does he prescribe anything at all, but he does insist on an adequate understanding with this country, and in view of all that he has written his inference is plain.

WALTER F. McCaleb.

Cleveland, Ohio.

*The Corner-Stone of Philippine Independence. A Narrative of Seven Years.* By FRANCIS BURTON HARRISON. (New York: The Century Company. 1922. Pp. viii, 343.)

Here is the record of an American "administrator in the making." It would be too much, perhaps, to expect such a book to make an absolutely impartial appraisal of the political acts of its author. But throughout, the reader is struck by the fairness of ex-Governor General Harrison to the opponents of his régime and by his readiness to admit the failure of the program of Filipinization, notably in regard to legislative procedure (p. 220). As a statement of faith in the capacity of the Filipino for self-government, the book comes with refreshing freedom from the dogma of the mental and moral inferiority of the "backward peoples."

Two important political reforms were carried out during his administration. The commission became virtually a cabinet with a majority of Filipino members. Under the terms of the Jones Act of 1916, an elective Senate and House, with appointive representation for the non-Christian Moros and hill tribes, were created with full legislative responsibility for the islands. At the same time Filipinos largely displaced the American administrative personnel—the percentage of Americans dropped from twenty-eight to four.

Mr. Harrison traces briefly the pacification of the Moros and hill tribes, the development of internal improvements and resources, the constantly impeded attempts of the Filipinos to organize an overseas unit during the war, and their enthusiasm for and support of the American cause. The educational system has been extended in seven years to reach double the number of children, now over a million regularly attending school. The unifying force of the schools he considers the essential guarantee against political disintegration under complete independence. He is critical of the continuance of a military force in the islands (though high in praise of many of the officers who served there during his term) mainly for two reasons—the suspicions as to our motives aroused among the Filipinos and the potential friction and non-coöperation between the military and civil governments over matters of policy. Not the least suggestive part of the book is his discussion of Filipino trust in America due to our past policy and the significant influence of that policy on the colonial administrations in neighboring states.

The sympathetic approach to the most delicate problem of modern politics—what to do with “the white man’s burden” and how to turn it back to its original bearers—which permeates the book, is a valuable contribution to our present thinking on colonial policy quite apart from any political differences of opinion.

PHILLIPS BRADLEY.

*Wellesley College.*

*State and Municipal Government in the United States.* By EVERETT KIMBALL. (Boston: Ginn and Company. 1922. Pp. x, 581.)

Fresh interest in the study of American government has been generated by the events of recent years and has stimulated anew the effort to provide satisfactory textbooks. In his work on the *National Government of the United States* Professor Kimball gave us one of the most serious and deserving products of this activity. In his second volume he completes the survey previously inaugurated. Certain features stand out in this treatment of the field of local government. State government is set forth as a phase of local government. In this particular the author has clearly grasped the tendencies of our constitutional history. County, town and other forms of local rural government are treated as manifestations of state activity, except for a scant forty

pages devoted to their rôle as channels for local self-government. One wonders whether this concession to limitations of space and the centralizing forces in state administration may not prove premature. There is a deal of vitality still remaining in some of these seeming relics of an earlier day.

Municipal government claims two-fifths of the book, an assignment that will seem disproportionate to many. It is even less easy to be reconciled to such a distribution since the state constitution is given a scant nineteen pages, and municipal administration receives five chapters as contrasted with but three devoted to state administration.

In the main, the author is content to present material that is already familiar, the only considerable body of new matter being selections and additions of developments transpiring during the years intervening since prior works were printed. There is admirable compression and accuracy in the statement of data, old and new, and in the conclusions. Indeed, one misses the discussion and citations which characterized Mr. Kimball's volume on the national government, perhaps to an undue extent. In this particular the book creates a problem for those who attempt to use it as a continuation text following the other work. The treatment is so much more elementary that it invites a decided lowering of the effort expended upon the subject unless suitable supplementary material is provided.

Professor Kimball's book will be valuable in courses which attempt to cover American national, state and local government in one year, and particularly so in sections of the country where the process of urbanization has become the dominant feature of social and political organization. It will be a useful work in any introduction to local government in this country. The apparatus with which the book is provided is excellent—table of contents, marginal and topical headings, and index. A bibliography might well have been added and might have prevented the curious omission of any reference to Kettleborough's collection of state constitutions (1918), the student being left with knowledge of Thorpe's collection (1909) only, and the volumes of the *American Yearbook*. Some of the chapters, such as that dealing with the judicial system, excel any other brief treatments available. On the soundness of the author's venture in redistribution one may suspend judgment. In a work which has so many merits one wishes there were more evidences of independent research and the quality of freshness which it alone can impart to a textbook.

RUSSELL M. STORY.

*University of Illinois.*

## BRIEFER NOTICES

One of the more recent public addresses of the late Lord Bryce has been preserved in permanent form in a small book of about a hundred pages, published by the Macmillan Company, entitled *The Study of American History*. This is the inaugural address delivered by Lord Bryce as the first occupant of the Sir George Watson Chair of American History, Literature and Institutions, a lectureship established for the purpose of creating in Great Britain "a wider knowledge of America and of its history, literature, and political, educational and social institutions." The book contains a brilliant synopsis of American history and of Anglo-American relations from the end of the seventeenth century and closes with a plea for "a spirit of goodwill which may replace international hatreds by a sense of common interests and a vision of the blessings concord may bring." In more ways than one this small volume serves as an introduction to some of the points brought out in Lord Bryce's last book, *International Relations*, which will be reviewed in the next issue of this journal.

The Minnesota Historical Society has edited the first volume of *A History of Minnesota* by William Watts Folwell (pp. xvii, 533). The book deals with a period of about two hundred years, from the coming of the first white men during the seventeenth century to the admission of the territory as a state in 1857. The opening chapters trace the onward march of the French fur traders, explorers and missionaries; and then follows an account of occupation and settlement by the Americans, the organization and development of the territorial government, the driving back of the Indians, and the framing of the first constitution for the new state. No better equipped person could have been found for this task than Dr. Folwell, whose long service as president of the state university, professor of political science and public servant has given him both the training and experience necessary for the writing of a comprehensive and critical history of Minnesota. There is scarcely a dull or uninteresting page in the entire volume and the work should appeal not only to residents of Minnesota but to all who are interested in the early history of the west.

Thirty authors have coöperated in writing the "inquiry" which is published by Messrs. Harcourt, Brace and Company under the title of *Civilization in the United States* (p. 577). The book embodies an attempt, by a group of "more or less kindred minds" to "sum up the



larger aspects of American life and culture, and point out the defects as well as the virtues of American civilization." Of outstanding interest to students of political science are the essays on "The City" by Lewis Mumford, on "Politics" by H. L. Mencken, and on "The Law" by Zechariah Chafee, Jr.

Dr. Isaiah Bowman's volume on *The New World* (World Book Company, pp. 632) is a notable contribution to the materials available for the study of political geography. It deals with the major and minor problems of the world in their geographical setting and there are indeed a great many of them at the present time. There is a wealth of useful data in this volume, and all of it appears to be presented with due respect to the importance of accuracy. The author has no thesis to substantiate, unless it be the proposition that Americans have paid too little attention to these problems in the past and ought to know more about them. The volume is abundantly supplied with maps and there is a well-chosen bibliography.

*Problems in Pan Americanism*, by Samuel Guy Inman (George H. Doran Company, pp. xii, 415), is a discussion of the relations, racial, economic, and political between the United States and the Latin-American republics. The author has derived his material not only from the literature on the subject but also from first hand study during fifteen years of residence and travel among South Americans. Consequently the narrative is enlivened by frequent references to personal experiences and observations. The first six chapters present an account of the social, political, economic and religious problems of Latin America, and trace the history of the early efforts toward friendship between the two continents, the events leading up to the Monroe Doctrine and what the Spanish Americans think of this doctrine today. In the later chapters the reader will find an account of such problems as the effects of foreign investments upon the political life of Latin America; the reasons for disunity among the American nations during the World War; the attitude toward the League of Nations; what our relations with Mexico have to do with the other southern republics; why Latin Americans are suspicious of North Americans; and what can be done to build up Inter-American friendship. There is nothing particularly new in the material presented, but the subject is treated from a somewhat different angle, and there is a most useful list of references for further information at the close of each chapter and a general bibli-

ography at the end of the book, both of which contain many new references to books and articles by Latin-American writers and public men.

Any one desiring a readable account of current problems in the great Far Eastern Republic will find much of interest and importance in *China's Place in the Sun*, by Stanley High (The Macmillan Company, pp. xxix, 212). Mr. High, who has traveled extensively through China, has built his book around the thesis that the people of the United States "are destined to be drawn into increasing commercial contact with China, and China potentially powerful in human and material resources, is destined by the development of these potentialities, for a place of world leadership." The greater part of the book deals with the movements now on foot which indicate that China is already being stirred by new aspirations and is undergoing an industrial and intellectual renaissance which will ultimately win for her "a place in the sun." Former Ambassador Reinsch has written an introduction to the book confirming Mr. High's opinions.

Professor Meredith Atkinson, of the University of Melbourne, has done a helpful piece of work in editing a book on *Australia* (Macmillan, pp. vi, 518). The volume contains a series of economic and political studies written by a dozen or so representative authorities, such as Professor Atkinson and Jethro Brown, who have had many years of experience with life in the commonwealth and can therefore be regarded as experts in their various subjects. Among the more important articles are those on "The Political Systems of Australia," "The Australian Labor Movement," "Judicial Regulation of Industrial Conditions," "Education in Australia," and the "White Australia Policy."

The lectures delivered at the Lowell Institute by Dr. Talcott Williams in 1920 have been published by Messrs. Doubleday, Page and Company under the title, *Turkey, A World Problem of Today* (pp. 336). The book presents a direct plea for the acceptance of a Turkish mandate by the United States.

Commander F. L. Robertson of the British Royal Navy could not have selected a more opportune time for the publication of a volume on *The Evolution of Naval Armament* (Dutton and Company, pp. vi, 307). The author presents in popular language the "materialistic side of

naval history" by tracing the progress of the three principal elements of armament ship, gun and engine—from the days of the early sailing ship to those of the ironclad. The book is primarily concerned with the evolution of armaments in the British Navy, but some attention is paid to French and American developments. The history is carried in detail only to 1880, the year in which the modern British navy had its beginning, but a short section has been added at the very end of the volume setting forth the effect of the torpedo and torpedo craft upon the evolution of the ironclad. The material is presented in a readable and interesting manner and the various types of craft and armament are made clear by a number of carefully selected illustrations.

*The A. B. C's of Disarmament and the Pacific Problems*, by Arthur Bullard, is published by the Macmillan Company (pp. 122). It is a discussion of the vital interests of America, Great Britain and Japan in the Pacific regions.

The fourth and fifth volumes of *A History of the Peace Conference of Paris*, under the editorship of H. W. V. Temperley, have been published by Henry Frowde under the auspices of the Institute of International Affairs. These volumes conclude the series. Volume IV deals with the collapse of the Central Powers, the Armistice, and the preliminaries of peace, also with the treaties of Trianon and Neuilly, and with what the editor calls "The Liberation of the New Nationalities." Volume V is devoted to the topic of economic reconstruction in the treaties and to the provisions affecting the rights of minorities. Many useful documents are appended, including the texts of the Austrian, Bulgarian and Hungarian treaties. The entire series forms a reference work of very great value.

Following his earlier book on the peace negotiations, Mr. Robert Lansing has published a volume on *The Big Four and Others of the Peace Conference* (Houghton Mifflin Co., pp. 213). The book contains portrayals of the dominating personalities of the conference, four full portraits and four "impressions." The former include Clémenceau, Wilson, Lloyd-George and Orlando; the latter Venezelos, Emir Feisal, Botha and Paderewski. Mr. Lansing's exceptional qualifications for sketching the characteristics of these various notables will not be denied, and his attitude on the whole is restrained, although not always non-partisan. The book makes good reading.

Colonel Repington's new diary, "*After the War*" (Houghton Mifflin Company, pp. xiv, 477), tells of his travels during the year 1921. He visits Italy, Greece, Austria, Hungary, Czechoslovakia, France, Germany, Roumania, Bulgaria and America, and hobnobs with the high and mighty in all except the last. In America all he gets is a handshake from President Harding, but in spite of his discovery "that the American Court is the most exclusive in the world," Colonel Repington had a good time at the conference and left this country only worried because he could not find out when a treaty was not a treaty. The whole book is full of political gossip, much of it interesting, but the eternal reparation squabbles are rather tiresome. The parts on Greece, Roumania and Bulgaria are perhaps the best, because little has been written about the situations there. This political gossip is livened by bits of personal gossip in true Colonel Repington style.

Sir William Robertson's *From Private to Field Marshall* (Houghton Mifflin Company, pp. 396), is a full and frank autobiography of a unique military career. During the years intervening between 1877 and the World War, the author made his way from a recruit in the 16th Lancers to the head of the Imperial General Staff. The first half of the book tells the story of this climb in breezy narrative. The rest of the book deals with Sir William's work in the World War and particularly with the operations of the British forces.

In the introduction to his book *Prime Ministers and Presidents* (George H. Doran Company, pp. 314), Mr. Charles Hitchcock Sherrill promises to introduce to the reader fifteen prime ministers and four presidents in Europe, several premiers of the British dominions and some of the distinguished statesmen of Japan. Contrary to the method of the authors of the "Mirrors," Mr. Sherrill shows us the qualities of these men which made them leaders instead of emphasizing their faults and leaving us wondering why on earth they are allowed to lead. Besides telling of the personality of these statesmen, the author gives us a clear idea of the problems which they have to meet. The book as a whole is sensible, polite and entertaining, just what one would expect from an experienced diplomat.

G. R. Stirling Taylor's *Modern English Statesmen* (R. M. McBride and Company, pp. 267) plays hob with the orthodox English biographies. The book is a "reevaluation" of six prominent British states-

men—Cromwell, Walpole, the two Pitts, Burke and Beaconsfield. In every case there is a new interpretation of old facts, with a liberal use of both acid and whitewash thrown in. The essays on Walpole and Disraeli are particularly aggressive in their attack upon old notions. The introductory chapter on "Statesmen and Statesmanship" is exceedingly well done.

In a series of twenty-nine sketches under the title *Portraits of the Nineties* (Scribners, pp. 319), the English biographer, E. T. Raymond, gives his readers a more than passing acquaintance with the great figures of British public life during the closing decade of the last century. They range from Gladstone to Henry M. Stanley, and on the whole the brief biographies are written in a judicious spirit. The reader who is familiar with Mr. Raymond's earlier writings need only be told that this volume suffers nothing by comparison; it is gossipy, anecdotal and contains wit as well as wisdom in its pages. His galaxy is one worth writing about.

*The Masques of Ottawa*, by Domino (The Macmillan Company, pp. 283), is of the same cult as *The Mirrors of Downing Street*, but its anonymous author is in more lenient humor. Pen portraits of two dozen Canadian notables, past and present, are given. The style is rambling and rather labored.

Dr. Lyman Abbott's *Silhouettes of My Contemporaries* (Doubleday, Page and Company, pp 361) contains intimate sketches of about twenty Americans, all of whom were prominent in their day, but some of whom have already faded from the public recollection. There are silhouettes in prose of P. T. Barnum, John B. Gough, Daniel Bliss and others, all set before us in Dr. Abbott's discriminating but kindly way.

Under the title *My Brother, Theodore Roosevelt*, an intimate biography by Mrs. Corinne Roosevelt Robinson has been published by Messrs. Charles Scribner's Sons (pp. 365). The author disclaims the intent to give her readers either a biography or a political history, but she has succeeded in providing both. The book gives a clear portrayal of many things which students of the Roosevelt era will find useful in days to come. The man and his times will be easier to interpret by reason of these intimate reminiscences.

Another Roosevelt book, written *con amore* by a Harvard classmate, is Bradley Gilman's *Roosevelt, The Happy Warrior* (Little, Brown and Company, pp. 376). It is an attempt to interpret Roosevelt "by his words and deeds." Although the book contains little that is new, it is written from a new angle and is interesting throughout.

"I have known nearly all the marked men of my time," said the versatile Tallyrand, "but have never known one equal to Hamilton." Mr. Arthur H. Vandenberg's volume on *The Greatest American* (Putnam's, pp. 353) is a biography of Alexander Hamilton. Besides a sketch of his life and work, however, the book includes a "symposium of opinions by distinguished Americans"—a considerable list of them. There is a long chapter on Hamilton's contributions to *The Federalist* with copious quotations.

An entertaining volume of personal reminiscences by the Princess Cantacuzene, *My Life Here and There* (pp. 322), is published by Messrs. Charles Scribner's Sons. The book deals with America in the eighties, Austria in the nineties, and Russia in the years preceding the World War. The picture of court life and intrigue in Petrograd in the days before the Revolution is especially vivid.

Mrs. Philip Snowden has recently published, through Messrs. George H. Doran Company, a volume which deals with her recent travels in various countries. The book is entitled *A Political Pilgrim in Europe* (pp. 284). It contains much interesting gossip concerning conditions and personalities in all parts of the Old Continent. The book is written with unusual descriptive ability.

The Macmillan Company has published a second edition of the *General Theory of Law* (pp. xxviii, 524), by N. M. Korkunov, late professor of public law at the University of St. Petersburg, the translator of which is W. G. Hastings, dean of the University of Nebraska Law School. The book is merely a reprint of the first edition, but occasion has been taken to correct a few obvious typographical errors which appeared in the earlier work. The fact that the original edition which was published in 1909 has been exhausted seems to have justified the translation of this scholarly treatise and to indicate its lasting value to legal students.

*The Law in Business Problems*, by Lincoln F. Schaub and Nathan Isaacs (Macmillan, pp. 821), is a presentation of the rules of law in their relation to modern business. The book contains not only a statement of the rules but numerous representative cases in elucidation of the rules. The editorial text diminishes as the book proceeds and the student is ultimately thrown very largely upon his own resources in working out the principles from the cases. This is an excellent method and the book will be found well fitted for use in collegiate courses relating to the subject.

*Practical Law Made Plain* is a little volume by Judson S. West, a justice of the Kansas supreme court, published by Edward Valentine Mitchell of Hartford, Conn. The writer undertakes, in a brisk, keen and humorous way, to tell "what the average person should know of law." It is simple diet, this intellectual repast of one hundred and two pages, but well worth reading for the drollery that it contains.

A manual on *Wills, Estates and Trusts* (in two volumes), by Messrs. Conyngton, Knapp and Pinkerton has been issued by the Ronald Press. The purpose is to provide a working manual for executors, administrators and trustees. The two volumes deal in a concise but adequate way with such matters as the transfer of property, the administration of estates, the operation of inheritance tax laws, the management of trust funds and the elements of trust accounting. They form a very useful addition to the literature of this general subject.

A noteworthy contribution to the literature of prison reform is Louis N. Robinson's *Penology in the United States* (John C. Winston Company, pp. 844). Unlike most other writers on this subject, Dr. Robinson does not confine himself to institutions of punishment, but deals generously with the various agencies which society has provided for dealing with offenders prior to their conviction. While the book is primarily intended for college students of social institutions, it offers the general public a means of becoming acquainted with an important part of our social mechanism. The book maintains the high standard set by the author's previous volumes.

Professor Fetter, of Princeton University, has revised in a most thorough fashion his textbook on *Modern Economic Problems* (The Century Company, pp. 611), which first appeared in 1916. This new

edition is something more than an attempt to bring statements of fact and figures down to date; parts of each chapter have been rewritten with reference to events since 1916 and several new chapters have been added in the parts on money, insurance, transportation and socialism. Another new feature is the list of references at the end of each chapter.

*The Trust Problem in the United States*, by Eliot Jones (Macmillan, pp. 598), is a comprehensive study of "those combinations that have (or had) monopoly power." It presents an account of the early devices employed to restrain competition, outlines the modern trust movement and describes a number of representative trusts. Considerable attention is given to anti-trust legislation and judicial proceedings.

One of three important books on various phases of the labor problem which have appeared during recent months, is Frank Tannenbaum's volume on *The Labor Movement* (Putnam's, pp. 259). The author speaks of his book as "neither a prophecy nor a religion," but an "analysis of the labor movement." In keeping with his general purpose, which is to write a description, Mr. Tannenbaum takes up such important topics as the educational function of the labor movement, its conservative function and its relation to existing industrial government. The book is well written and interesting.

*What's What in the Labor Movement*, by Waldo R. Browne (Huebsch, pp. 578), is a glossary or cyclopedia of labor affairs. Alphabetical in arrangement, it lists and defines all the terms used in labor discussions. Theories are briefly explained, organizations are described and expressions are defined. It is a highly useful reference book.

*The International Protection of Labor*, by Boutelle E. Lowe, is published by the Macmillan Company (pp. 439). Its purpose is to describe the movement for international labor legislation, to present the labor agreements which have resulted therefrom and to indicate what the United States can do to promote the cause. The book is rich in its reprints of original documents and contains an exhaustive bibliography.

*The Economics of Socialism*, by H. M. Hyndman (Small, Maynard and Company, pp. 286), is an exposition of Marxian ideas for the benefit



of those who find the logic of Marx too difficult. Chapters are devoted to such topics as value, rent, interest, wages, and "the final futility of final utility." Mr. Hyndman confesses that not all the trouble arises from the heavy style in which Marx always wrote; "his thoughts themselves are difficult of comprehension." The present books sets forth these thoughts in simpler language and with a new orientation.

A criticism of *Karl Marx on Value* (pp. 52) by J. W. Scott, has been published by Messrs. A. & C. Black.

A posthumous volume by Arthur Jerome Eddy, entitled *Property* has come from the press of Messrs. A. C. McClurg and Company (pp. 254). It is a book along much the same lines as the author's *New Competition*; its main plea is for an enlargement and strengthening of the competitive system.

*The Organization of the Boot and Shoe Industry in Massachusetts before 1875*, by Blanche Evans Hazard (Harvard University Press, pp. 293) is a historical survey of an important New England industry, based upon a careful study of town records, parish registers, account books, newspapers and other first hand material. It is a highly useful contribution to American economic history.

Professor John Lewis Gilpin's new volume on *Poverty and Dependency* (pp. 707) is published by the Century Company. It is an exhaustive discussion with adequate attention to the historical as well as to the present-day aspects of the problem. Although primarily intended as a college text, the book will undoubtedly prove of service to social workers everywhere by reason of its thoroughness and its clarity of presentation.

*The Elements of Social Science* by R. M. MacIver, associate professor of political economy at the University of Toronto (E. P. Dutton and Company, pp. vi, 186), discusses the structure of society and traces its evolution in a scholarly manner. The author's main theme is that "society is an infinitely interwoven series of relationships, issuing from the wills and purposes of beings who realize their likeness and their interdependence, in a word their community. It is, therefore, in the first place a state or quality of mind, not a mere means or agency for the comfort or convenience of the beings so minded" (p. 3).

The University of Chicago Press has published an *Introduction to the Science of Sociology* (pp. 1040) by Robert E. Park and Ernest W. Burgess. It is a collection of readings on the subject drawn from a wide range of sources and covering a broad field; but the materials are so skilfully chosen and put together that the volume is to all intents a systematic treatise. Each chapter is made up of four parts: (a) an introduction (usually written by the authors), (b) a selected discussion, (c) a list of topics and problems for discussion or investigation, and, (d) a bibliography. The bibliographical apparatus is extensive and valuable. Some of the chapters are long,—virtually small monographs. Teachers of sociology will find the book to be of unusual value.

The Macmillan Company has brought out a new and greatly revised edition of Professor E. R. A. Seligman's *Essays in Taxation* (pp. 806). Originally published in 1895, this book has now run through nine editions. Five new chapters are added in the latest issue, three of them dealing with war taxes and loans.

The same publishers have executed a remarkable feat of bookmaking by the publication of *The Outline of History* by H. G. Wells in a single volume (pp. 1171). By the use of light paper the book has been kept within convenient size; it is no bulkier than some commonly-used college textbooks.

A considerable portion of Lewis Einstein's *Tudor Ideals* (Harcourt, Brace and Company, pp. 367) deals with various aspects of English government during the sixteenth century. There are enlightening chapters on "Office and Corruption," "Political Morality," "Public Opinion" and so on. The spirit of the sixteenth century is well interpreted. To weave together the multiple threads of dynastic and parliamentary intrigue has not been an easy task, but Mr. Einstein has done it with great skill. It is a rather drab fabric that the author produces as the result of his careful research; at the same time he has put as much brightness upon it as fidelity to the truth would permit. In every way the book meets exacting demands; it is scholarly, suggestive and interesting.

The caption *Twenty Years* (by Cyril Abington, Clarendon Press, pp. 207) gives no indication that here is an interesting and scholarly volume on the development of the party system during the two decades

1815-1835. Some of its chapters contain material which no careful student of nineteenth-century English politics can afford to overlook. Considerable attention is given to the Liverpool Ministry and to the party aspects of the first Reform Act. The author is headmaster of Eton.

A new *History of Rome to 565 A.D.*, by Professor Arthur E. R. Boak of the University of Michigan, is published by the Macmillan Company (pp. 444). It is intended to meet the needs of introductory college courses in Roman history.

Dr. Kenneth Colegrove's *American Citizens and their Government* (The Abingdon Press, pp. 333) aims to present in brief compass a general view of American government. Neither in plan nor in substance does the book break new ground; it is merely a restatement, in rather elementary form, of the things found in college textbooks. There are some references at the end of each chapter, chiefly to books of the same sort.

The Yale University Press has issued a new edition of S. Miles Bouton's *And the Kaiser Abdicates* (pp. 332). Appended is an English translation of the new German constitution and a chapter in explanation of it. The volume gives a full narration of what happened in Germany during the days preceding the *debacle*.

Under the title *The Rational Good* (Henry Holt and Company pp. 237), Professor L. T. Hobhouse has put together a series of chapters in amplification of his earlier book on *Morals in Evolution*.

## RECENT PUBLICATIONS OF POLITICAL INTEREST BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

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## STATE ADMINISTRATIVE REORGANIZATION

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Writing in 1919, Mr. W. F. Willoughby declared that "at the present time few reforms of government in the United States are more urgent than that of the reorganization of the administrative services of our state governments, so as to put them upon the integrated or departmental basis."<sup>1</sup> This need for state administrative reorganization is now generally recognized, not only by political scientists and students of administration, but also by public officials and practical administrators. This is indicated by the large number of governors who, in public messages, have urged upon their legislatures the adoption of measures of administrative reform; by the investigations and reports of efficiency and economy commissions or similar bodies created in many states; and by the laws actually passed providing for administrative reorganization in Illinois, Idaho, Nebraska, Ohio, Washington, Massachusetts, and other states.

A movement of this character naturally follows the line of least resistance, and consequently the changes in administrative organization heretofore made have been through statutory enactment rather than through constitutional revision. Inasmuch as, in most states, a faulty organization of the administration is stereotyped in the constitution, thoroughgoing reorganization by mere statutory enactment is practically impossible. The constitutional difficulties which impede the movement for administrative reorganization should warn us against the insertion in the organic law of detailed administrative provisions. The introduction of the short ballot and the equalization of the terms of office of the governor and other state officers are reforms which

<sup>1</sup> *The Government of Modern States*, p. 393.

are impeded by constitutional restrictions. The changes in the constitution which are desirable in order to provide for needed flexibility are more in the nature of elimination of existing provisions than of the addition of others. The Massachusetts constitutional amendment of 1918 providing for the establishment by law of not more than twenty administrative departments represents, in principle, the extent to which it seems desirable to go in adopting positive constitutional provisions regarding the administrative organization.

In considering the fundamental improvement in the position of the executive department as a whole, two main questions arise: first, what shall be the relation of the executive to the legislature; and, secondly, what provision shall be made in respect to the internal organization of the executive and administrative authorities? With reference to the first question, two radically different views are held. According to one view, the principle of separation of powers must be altogether abandoned, and it is proposed that this change be brought about by making the legislature the central controlling body in the state government and giving it power to appoint and remove the governor. Those who hold this view favor a close approach to the parliamentary form of government in the states. They also hold that the commission form or, better still, the commission-manager form of city government should serve as models for the reorganization of state government.

With reference to this proposal, it may be noted that in the early governments of the original states, the governor was made subordinate to the legislature, being appointed by that body in several of them; but the tendency since then has been in the direction of increasing the independence of the governor from legislative control, especially with reference to his political powers. Any plan for the reorganization of the state governments, in order to be successful, should be in harmony with the general trend of their organic development.

Although there was formerly some agitation in favor of the application of the commission form of city government to the states, this proposal is not now seriously made. It is very

doubtful whether it would be expedient to apply to the state governments without modification the main feature of commission government,—the merging of executive and legislative powers in the hands of the same body. Although the principle of separation of powers has undoubtedly been carried much too far in its application to the state governments, it does not seem wise to go to the other extreme of abandoning it almost altogether by entirely merging the political departments of such governments, or bringing them into such close relation as almost entirely to lose their separate identities. Although the governor is an important political officer, he should also be recognized as holding a distinct and independent position as head of the administration in a much more conspicuous way than is provided for under the commission form of city government.

On the other hand, equal recognition should be given to the position of the governor as a political leader in the matter of legislation and the formulation of public policies. In other words, the governor ought to be in politics, in the best sense of that word. For this reason, it is doubtful whether the commission-manager form of city government is suitable for adoption without modification by the states. The city manager is an administrative expert, subject to the control of the commission, and is not supposed to be in politics. The governor cannot be expected to assume a position of outstanding political leadership and to promote his policies even, if necessary, in opposition to a majority of the legislature, if subject to appointment and removal by that body. The manager plan, if adopted by the states, would probably tend to reduce the governor to the position of a mere administrative chief.<sup>2</sup>

Although it seems desirable that the principle of separation of powers should not be altogether abandoned in state government, the executive and legislative departments should be brought into closer contact and coöperation than now exists between them. This is necessary in order that the political leadership

<sup>2</sup> It might be desirable, however, in some states to authorize the governor to appoint a state business manager to attend to matters of general administration, such as the purchase of supplies for the operating departments and institutions.

of the governor may be effective. To this end a constitutional provision should be adopted giving the governor a seat in the legislature, with the privilege of introducing bills and participating in debate, but without that of voting. The heads of executive departments should also be accorded legislative seats with similar privileges, although they would not be responsible to the legislature, but to the governor. This would enable the executive to assume openly a position of leadership in advocating administration measures on the floor, and would also enable the legislature to criticize more intelligently the results of administrative action.

A rule similar to that adopted by the Illinois house of representatives in 1913 should be established, giving precedence to bills designated by the governor as administration measures. That rule was defective in excepting from such prior consideration appropriation bills. Bills relating to state finance are those which it is especially desirable that the governor should take the initiative in introducing and to which the legislature should be required to give prior consideration. Much the larger share of the expenditures of the state governments is made by the executive and administrative authorities; but, even if this were not true, it seems proper that the governor, in his rôle as political leader, should take the initiative in formulating the budget and in introducing the budget bill. Whoever prepares the budget is likely also to exert an influence upon the plan of state activities or work-program. In planning this work and in drawing up the budget the governor should have the assistance of a staff agency directly under him, which should conduct continuous surveys and investigations of the work of the various agencies engaged in the performance of service functions, in order to collect the information upon which to base a critical examination and revision of the budget estimates.

The legislature should still retain its power of rejecting or modifying the governor's budget. Since the governor retains his item-veto (which should be expanded so as to include the power of reducing items), it seems unnecessary to prohibit the legislature by constitutional provision from increasing the

governor's estimates, though its power to do so might be restricted by requiring an extraordinary majority for this purpose. In case of decided and continuous difference of opinion between the legislature and the governor over important parts of his budget bill, provision might be made for settling the question by popular referendum.<sup>3</sup>

The matter of a proper budget system for the state is closely associated with that of the reorganization of the state administration into a more coherent and integrated system. The scattered and decentralized condition of the administrative agencies found in most states renders it difficult, if not impossible, to formulate and carry out a scientific budget plan.<sup>4</sup> If the purpose of the executive budget system is to be accomplished, it is necessary first to effect such a reorganization as will make the governor the real, instead of the mere nominal head of the administration.

This brings us to the consideration of the second main phase of the general subject, namely, internal reorganization, or the readjustment of the relations between the different executive and administrative agencies in the interests of great unity, responsibility, concentration of authority and efficiency in action. One of the main obstacles to effective administrative organization in most states, which, on account of its constitutional basis, is difficult to change, is the election of the heads of executive departments by popular vote. Considerations of party cohesion may produce some degree of harmony between these officers and the governor, inasmuch as they are all, as a rule, elected on the same party ticket. But it sometimes happens that they belong to a different party from that of the governor, or a different faction of the same party, and frequently the governor is able to exert little or no real control over them. The practice of electing the heads of departments exerts a subtle influence in dividing the administration, developing friction and causing a lack of harmony and coöperation with the governor and between the various departments. It also causes the injection of political considera-

<sup>3</sup> Cf. the Model State Constitution presented by the Committee on State Government of the National Municipal League, sect. 27.

<sup>4</sup> J. M. Mathews, *Report of the Consolidation Commission of Oregon* (1918), p. 16.

tions and ambitions into the management of elective offices which are not conducive to efficiency and coöperative action.

It is generally agreed that the short ballot should be adopted as one of the main features of a reorganized state administrative system, not primarily for the purpose of lessening the burden upon the voter, but mainly for the purpose of integrating the administration and concentrating responsibility. There is some question however, as to how short the ballot should be made. Probably the best plan would seem to be to elect only one other officer of the executive department besides the governor, either the lieutenant-governor or the auditor. The office of lieutenant-governor should either be abolished or else reconstructed into a position of greater worth and usefulness. He might be made a sort of deputy governor and relieve the governor of many of the routine duties which now distract his attention from more important matters. In case the office of lieutenant-governor is abolished, then the auditor should be retained on the elective list for two reasons. The first is in order to give him a position somewhat independent of the administration, which might be emphasized by electing him at a different time from that of the gubernatorial election. The second reason is in order to provide an officer of state-wide, instead of local election, to succeed to the governorship in case of vacancy in that office. In case the office of lieutenant-governor is not abolished, the second of these reasons for electing the auditor no longer operates, and it would be better that the latter be appointed by the legislature as its agent in keeping a check on expenditures.

The introduction of the short ballot would, of course, result in increasing the appointive power of the governor. This in itself, however, would not be sufficient to enable him to exercise an effective control over the whole administration in view of the large number and the scattered and disorganized condition of the administrative agencies in many states. It is necessary, in addition, to effect a consolidation and departmentalization of the administrative services. A reduction in the number of separate agencies is necessary for effective central control over them, as well as for their proper interrelation and coöperation. As a

result of this reduction in number and the increase of central control, the heads of the executive departments could be formed into a body of advisors or governor's cabinet for formulating the policies and planning the general work-program of the administration, upon the analogy of the cabinet officers in the national government. The consolidation of related agencies would tend to simplify the administrative organization and to make it more responsive to the governor and, through him, to the people.

There should be probably not more than a dozen main departments into which all the administrative agencies should be grouped. One reason for this limitation is that a larger body of department heads would not be suitable for consultative purposes in cabinet meetings. A more important reason is that a larger number of separate departments tends to complicate and decentralize the work of administration. The number of separate departments should be as small as feasible consistent with the grouping in each department of related functions. The consolidation of administrative agencies thus involves not only the creation of a few major departments in place of a large number of small ones, but also the grouping of related services within each major department. The exact number of departments and the grouping of functions under departments will naturally vary somewhat from state to state, due to differences in local conditions. Some large departments, however, such as those of finance, education, and public health, would probably be suitable under conditions found in all the states.

After the regrouping of the scattered administrative agencies into a few major departments has been made, it still remains to be determined what form of internal organization is desirable for these departments. Should we have at the head of the department a board, a commission, or a single commissioner? The prevalence of boards and commissions in the past has been one of the main causes of the disintegration of the administration and the diffusion of responsibility. They have amply demonstrated their incapacity for administrative work. The tendency in reorganization plans, whether proposed or in operation, has been very decidedly away from the board or commission and in



the direction of the single commissioner. It is recognized, however, that for the performance of advisory, quasi-legislative, and quasi-judicial functions several heads are usually better than one, and in these cases, therefore, some concession may be made to the board or commission type of organization. Thus, in Illinois, all of the nine departments created by the Civil Administrative Code are under single commissioners, called directors; but provision is made for certain commissions, such as the tax commission and the industrial commission, which are nominally placed in the appropriate departments. Provision is also made for certain advisory and non-executive boards in some of the departments. The Illinois plan is faulty on account of the loose and ill-defined relation between the commissions and the departments in which they are nominally placed. In departments where there are quasi-legislative or quasi-judicial functions to be performed, associate directors should be provided to act with the head director for the exercise of such functions, but the head director should be solely responsible for the administrative work.

Another question which arises is as to the proper method of selecting the heads of departments and other officers of the administration. The short ballot plan, as already indicated, provides that the governor should appoint the heads of the departments, with the possible exception of the auditor, who, under certain circumstances, may be retained on the elective list. A further question is as to whether the governor's appointments should be subject to confirmation by the senate. Such confirmation is unobjectionable if a tradition exists to the effect that appointments to cabinet positions are to be confirmed as a matter of course. This is the practice in the case of presidential appointments to such positions; but there is no assurance that state senates would everywhere take the same attitude toward the governor's appointments, especially when the governor and senate are out of political harmony. Where a power is unobjectionable only when it is not used, there seems to be no good reason for conferring it.

Efficiency and economy commissions, in their proposed plans for state administrative reorganization, usually recommend that the power of the senate to confirm appointments be retained. But this recommendation is probably made for reasons of expediency, since the proposed plan must secure the approval of the senate in order to be adopted. Looking at the matter from a more detached point of view, it seems better to dispense altogether with the action of the senate in this matter, so as to place the responsibility for appointments squarely on the shoulders of the governor where it belongs, rather than to divide it between him and the senate. The governor may need advice before making appointments, and it may be suggested that it would be sufficient to require the governor to secure the advice of the senate but not to follow it. But no provision of law is needed for this purpose, and it may be presumed that when the governor needs advice in making appointments, he will consult the persons capable of giving it, whether in or out of the senate. The only legal check that seems needful in the matter is to require that the governor issue a public statement indicating his reasons for making the appointment, which should include a description of the appointee's qualifications for the position. This would tend to prevent wholly unsuitable appointments and would at the same time concentrate responsibility for the appointment.

Some plans of administrative reorganization give the governor the power of appointing also the heads of bureaus and divisions within the major departments. But this is a mistake for three reasons. In the first place, it affords a plausible excuse for requiring that these appointments be confirmed by the senate, while no one would contend that this should be required if the appointments are made by the heads of the executive departments. In the second place, it burdens the governor with the importunities of large numbers of office seekers. The time and attention of the governor should not be distracted with matters of petty patronage, but should be free for the consideration of the larger problems of administration. In the third place, it violates the principle of the due subordination of each officer to

his superior. The governor ought not to hold the heads of departments responsible for their work unless they are given the power of appointing the heads of the divisions and bureaus within their departments, although they may consult with the governor in making the appointments. The proposal to reduce the number of elective officers does not contemplate that the total number of officers to be appointed by the governor should be increased, but rather that, instead of appointing many officers and boards of relatively minor importance, he should make only a few, but much more important appointments.<sup>4</sup>

Although the general scheme of administrative organization should be provided by legislative act, provision should be made for enabling the governor to meet emergencies by conferring on him the power to redistribute functions among administrative agencies in the interest of economy and efficiency, on the analogy of the power conferred on the President by the Overman Act. In the interests of efficiency and flexibility, the duties and functions of the administrative officers and employees should be determined to a large extent by executive orders and regulations rather than by the detailed provisions of legislative acts. The director of each department should be empowered to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employees, and the distribution and performance of its business. The subordinate officers and employees, under the heads of bureaus and divisions, should not be subject to appointment for political reasons. They should have relatively secure tenure, and a proper separation of politics from administration should be effected by providing for their appointment and removal only in accordance with the principles of the merit system. This system might in time be extended even to the heads of bureaus and divisions immediately under the cabinet officers, since they are not properly policy-determining officers, but it is their duty to carry out the policies of their superiors.

It does not seem necessary that heads of departments should be appointed for definite terms of office. They should serve at

<sup>4</sup> J. M. Mathews, *Report of the Consolidation Commission of Oregon* (1918), p. 10.

the pleasure of the governor, subject to removal by him at any time. This is merely carrying out the plan of the national government, and has long been the law in Pennsylvania with reference to the attorney-general and the secretary of the commonwealth. It seems desirable, however, to provide against any arbitrary exercise of the removal power by requiring that, as in the case of appointments, the governor shall issue a public statement of the reasons for removal. Just as the governor is required to state his objections in vetoing a bill, so he should be required to give similar publicity to his reasons for appointments and removals.

Where terms of office of any members of the administration are specified, they should not be longer than that of the governor. The terms of statutory officers have tended to increase, but this tendency has not been so great in the case of the governor because his term is definitely fixed in the constitution. It should in all states be raised to at least four years, in order that he may have adequate opportunity for carrying out a constructive program. Moreover, his inauguration should take place about two months before the first regular legislative session in his term in order to give him a better chance than he now has of maturing his budget plans and other features of his legislative policy before the session begins.

The plan of reorganization herein proposed makes the office of governor the central pivotal point about which the whole administration revolves. It may be objected to by some on the ground that it makes the governor too powerful. This, however, is merely applying to the states the theory of the national government, in which the President is the real head of the administration. There is no great danger in conferring on the governor increased power if it is accompanied with commensurate responsibility. This responsibility will be enforced in part through the simplified machinery and the greater publicity in which the work of the administration will be conducted under the reorganized system. An adequate civil service system on the merit basis, extending preferably even to the heads of bureaus and divisions, will help to prevent a governor, if perchance so

inclined, from using his power to build up a political machine. A permanency of tenure on the part of the heads of bureaus and divisions immediately under the heads of departments will go far toward maintaining efficiency in administration in spite of the unavoidable frequency of change in the personnel of department heads. A legislative council might be created to sit between regular legislative sessions and to act as a continuous critic of the administration. In order to increase the governor's responsibility directly to the people, provision should be made for his recall by popular vote, subject to reasonable restrictions. This would enable the people to pass upon the governor's general policies prior to the end of his term, as was done in North Dakota in 1921, where the governor was recalled for the first time in any state. If the popular recall is introduced, it would then be feasible to have the governor elected for even longer than a four year term, subject to recall at stated intervals during his term. This would tend to attract abler men to the office and give them larger powers and opportunities of leadership, subject to adequate accountability to the people for the use and abuse of their powers and opportunities.

## DOGMAS OF ADMINISTRATIVE REFORM ✓

AS EXEMPLIFIED IN THE RECENT REORGANIZATION IN OHIO

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An extensive reorganization of administrative offices in Ohio was accomplished by a law enacted in April, 1921, and in effect July 1st, 1921.<sup>1</sup> That reorganization is taken as the central point of this discussion, not because persons outside of Ohio are interested in details of Ohio government, but because the Ohio reorganization is one of the latest of such schemes to be put into effect and because it has been considered to exemplify relatively well the principles which our leading administrative reformers wish to see applied in our state executive departments. There is nothing of more practical importance in this connection than to examine carefully the principles upon which these reorganizations are supposed to be based. The editor of the *National Municipal Review* pronounces the Ohio reorganization to be "a big advance in popular government;" and Dr. W. F. Dodd, one of our leading experts in state government, says that the Ohio reorganization "is perhaps the most effective yet planned in this country, except for the fact of the constitutional limitation of the governor's term" to two years. This paper will sketch, as briefly as possible, and at certain points roughly judge, the changes made by the Ohio reorganization act of

<sup>1</sup> The act is entitled "An act to establish an administrative code for the State, to create new administrative departments and redistribute among them existing administrative functions. . . ." (109 Laws of Ohio, 105-135). There is not space here to review the extensive surveys and recommendations made by experts preliminary to the reorganization, or to discuss the action of the legislature in declaring the reorganization act to be "an emergency law necessary for the immediate preservation of the public peace, health and safety" (by this action protecting the act from the test of a popular referendum) or the decision of the Ohio supreme court sustaining the action of the legislature.

1921, and then try briefly to indicate my general attitude towards the objects and policies of such a reorganization.

Before the reorganization we had fifty-one distinct, mutually independent, administrative agencies—including the various offices, boards, and commissions comprising the executive department of the state. For convenience we may use the term "department" uniformly as the designation for any of these agencies. Six of the departments were headed by elective officers, constitutionally established; the reorganization, being carried out by statutory legislation, could for the most part be applied only to the forty-five appointive departments. These appointive departments were variously organized as to their headship, the familiar forms being used: for some of them the head was a single official appointed by the governor or governor and senate, and holding office for at most a term no longer than that of the governor; for others the form of headship was that of a small commission of salaried members devoting all of their time to their positions and exercising jointly direct and actual control of the work of the department; for others the type was that of a large board of unsalaried members exercising powers of general regulation and supervision, actual administrative direction being in the hands of a single official appointed by the board; a fourth type was that of a board composed in the manner just described, but possessing powers chiefly of investigation and publicity and exercising little or no actual administrative authority directly or indirectly.

What has the reorganization act done in the way of regrouping, and transforming the controlling office in these forty-five departments? Some of them are left unaffected by the act; a number of them are consolidated into eight main departments created by the act, each of these new departments being headed by a single official—a director, appointed by the governor and senate and (with the exception of the director of education) serving at the pleasure of the governor;<sup>2</sup> finally, some of them,

<sup>2</sup> These eight new departments are as follows: finance, commerce, highways and public works, agriculture, industrial relations, education, public welfare, health. The act provides that the superintendent of public instruction shall be director of education; the former is a constitutional officer appointed by the governor for a four year term.

though left independent in tenure, are made partially subordinate in functioning to certain of the main, new departments. The net result, so far as number of departments is concerned, is about as follows: in place of the former forty-five separate appointive departments, we now have twenty-two independent and thirteen partially independent departments,<sup>3</sup> the twenty-two independent departments including the eight new departments plus the fourteen old departments left undisturbed by the act.<sup>4</sup> The more important changes in form of organization and distribution of functions are indicated below.

With respect to the changes involved in the creation of the eight main departments, the resulting consolidations seem clearly useful in the case of four of these departments—the departments of commerce, finance, agriculture, and highways and public works; in each of these instances the reorganization results in bringing together into a single office a number of agencies performing closely similar administrative functions; this ought to result in some beneficial correlation of work and in some appre-

<sup>3</sup> The thirteen departments made partly dependent, and left partly independent, by the reorganization, are the following: six examining and licensing boards (medical, dental, pharmacy, optometry, embalming, accounting), left independent in tenure but "attached to the department of education;" three administrative commissions exercising supplementary legislative and quasi-judicial functions (the industrial, public utility, and tax commissions, attached, respectively, to the departments of industrial relations, commerce, and finance); the commission for the blind, independently appointed but attached to the department of public welfare; the state library board, placed "in the department of education," but with a majority of its members independent of the director of education; the commissioner of soldiers' claims, placed "under the supervision of the adjutant general," but not appointed or removable by him; the public health council.

<sup>4</sup> The fourteen departments left wholly or almost wholly unaffected by the reorganization are the following: the civil service commission; the adjutant general; the boards of trustees of the six universities and normal schools, of the archaeological and historical museum, and of the soldiers' and sailors' orphans' home; the board of directors of the Longview hospital; the veterinary examiners; the commissioner of prohibition (created by act of February 9, 1921); the superintendent of banks. The last-mentioned office is said by the act to be "in the department of commerce," but the immediately subsequent provisions of the act (added by amendment in the course of the passage of the bill through the legislature) give the office a position of apparently complete independence, in tenure and function, of the department of commerce.



cial saving both in overhead, and in inspectional, clerical and other subordinate, service. It may be a debatable question whether the single director, changeable with each change of governor, is the proper form of headship for the department of public works, in view of the need for preserving continuity of policy in highway administration and for maintaining constant relations of coöperation and mutual confidence between administrative head and engineering staff; it seems possible that it would have been better to have provided for control of this department by a commission of members holding overlapping terms and acting through an administrative director appointed by them. Under the department of commerce five formerly independent agencies dealing with the purely administrative regulation of certain private business activities are combined.<sup>5</sup>

The department of finance brings together a group of clearly interrelated functions—by giving to the director of finance the duties formerly performed by the governor's budget commissioner, by transferring to this department the state purchasing bureau (formerly under the secretary of state) and the function of public printing formerly in the hands of a separate appointive office.<sup>6</sup> With respect to agricultural administration, where prior to the act a high degree of consolidation existed, the act carries this a step further by placing the agricultural and experimental station under the joint control of the director of agriculture and the board of trustees of the state university.<sup>7</sup> The creation of the department of highways and public works merges into one department several formerly distinct offices

<sup>5</sup> The five offices brought together in the department of commerce are the following: superintendent of insurance, inspector of building and loan associations, commissioner of securities, inspector of oils, state fire marshal.

<sup>6</sup> In addition the act gives the director of finance new functions in connection with checking up on the incurring of liabilities by administrative officials, and prescribing forms for accounts, orders, invoices, and financial reports. These functions constitute a probably useful addition to the state auditor's work of auditing incurred liabilities.

<sup>7</sup> Prior to the act the agricultural activities of the state (except those of the experiment station and of the college of agriculture of the state university) were administered under the control of an unpaid board of agriculture acting through a secretary appointed by the board.

and functions relating to state highways, state-owned buildings, canals and lands, and the leasing of quarters for state offices.<sup>8</sup>

The changes effected in the establishment of the four other main departments—those of education, industrial relations, health, and public welfare—deserve somewhat fuller consideration. The act attempts to create a department of education by designating the superintendent of public instruction (a constitutional, appointive officer) as director of such a department and by attempting to bring various educational agencies of the state into more or less close association with the department. First, the director of education is made, *ex officio*, a non-voting member of the board of trustees of each of the six state colleges and normal schools. As each of these institutions has as at least part of its work the training of teachers for the public schools, there are possible advantages in this slight change. Secondly, the director is made *ex officio* a voting member of the board of trustees of the state archaeological and historical society. Thirdly, the director is made a member of the state library board, the other members being appointed by the governor. Since the eight boards just indicated are left entirely independent of the power of the director of education (except for his single vote in each of the two last-mentioned boards), no very strong consolidation is effected by the foregoing changes. Fourthly, the act places in the department of education the formerly independent office of state geologist. This transfer by statute is likely to make little if any change in the actual administration of the work indicated. The director of education has no fitness for or interest in the work of the geological survey. The present director realizes this; and the work is of such character as not to tempt interference by any future director. This change is probably harmless and useless—a mere paper consolidation. Fifth, the act transfers to this de-

<sup>8</sup> The offices of state highway commissioner, superintendent of public works, and state building commission (an *ex officio* body) are abolished by the act and their duties conferred upon the director of highways and public works. The act also transfers to this director the duties formerly fulfilled by the adjutant general in his capacity of superintendent of public buildings. Another act passed in the same session abolishes the state highway advisory board.

partment the work of examination and censorship of motion picture films (work formerly performed by a board appointed by the governor but acting under the industrial commission); the act creates an unpaid advisory board of film censorship appointed by the governor, the director being given powers of decision in this field. Finally, the act "attaches" to the department of education six of the state's seven examining and licensing boards; the director is required to recommend to the boards standards as to preliminary education, methods of determining the standing of professional schools, methods of examination, and methods of enforcing laws which the boards are required to administer; and the boards are severally authorized to delegate to the department any of their powers or duties with respect to matters concerning which the department is directed to make recommendations. In general, it can hardly be said that a department of education is created by the act. The director's powers in relation to the public schools are left as before, and the other educational activities of the state are for the most part left as independent as they were prior to the act.

With regard to labor administration we had complete consolidation prior to the act, the various agencies dealing with the administration of labor laws having by an act of 1913 been brought together under the industrial commission created by the latter act. The reorganization of 1921 disrupts this unity. It creates a department of industrial relations, headed by a director, to which department are transferred the administrative functions of the industrial commission, the commission remaining an independent body and retaining its supplementary legislative and quasi-judicial powers. Further comment on this sort of change will appear below.

In health administration again there was little opportunity for further consolidation, practically all health activities of the state being already administered under one department; the act, however, makes one useful change by transferring the bureau of vital statistics, formerly under the secretary of state, to the department of health. Prior to the reorganization this department was under the control of a council of health composed of the

health commissioner and four other members appointed by the governor, with overlapping terms; this council exercising only powers of final control and general regulation, administrative and executive functions being performed by the health commissioner appointed by the council for a five-year term. The act takes away from this council the power to select the executive officer of the health department, but retains the council as a separate agency with powers to issue general regulations affecting health matters; the enforcement of these regulations is placed in the hands of the director of health who is made independent of the council. This change in the controlling office of health administration seems of doubtful wisdom. It establishes a division of authority where there seems to be no need for such division. Moreover, the primary needs in this work seem to be continuity of policy and a relation of mutual cooperation and confidence between directing head and technical staff. Is it practicable under any other arrangement for the director to reach satisfactory conclusions as to whether, for example, he should order a municipality to change its system of water supply or sewage disposal? Can such decisions be intelligently reached except after a somewhat extended investigation by sanitary engineers who sustain a relation to the administrative head like that of team to captain or of professors and instructors to head of department in a college? And are not such conditions and relations more likely to be obtained under the former organization of our health department than under the new organization?

In the administration of state charities and corrections also we had a high degree of consolidation prior to the reorganization. The administration of nineteen of the state's twenty-one charitable and correctional institutions had by an act of 1911 been consolidated under the control of a board of administration of four members (not over two of them to be of the same political party), appointed by the governor with overlapping terms; the bureau of juvenile research had later been placed under this board. The act substitutes a director of public welfare for this board; and introduces further concentration by

abolishing two independent boards—the board of clemency and the board of state charities—and placing their duties under the director of public welfare. Further comment seems to be in place with regard both to the change in the form of headship of this department and to the discarding of the independent charities board. I do not believe that prior to the reorganization we had the proper sort of body to direct the administration of the state's charitable and penal institutions; the equal division between parties is rarely satisfactory, and the work of this department is of the character which can probably be more satisfactorily executed through a single official. I believe the proper form to have substituted for the administering board is the larger unpaid board controlling through a single executive official. The board of state charities, abolished by the act, was an unsalaried board of nine members appointed and serving in the usual form. It possessed important powers in the way of investigating and drawing public attention to any feature of the management or condition of any public or private benevolent or correctional institution in the state; it could also withhold approval of plans of buildings or changes in the buildings of the public institutions; and it had the further function of inspecting and certifying all agencies caring for defective children. The composition and functions of this board were such as normally to attract to its membership public-spirited persons who had no particular office-holding ambition or political interest in the narrower sense of the word, and yet who were willing to give some time and serious attention to observing and criticising charitable and correctional work done under the state's auspices. It was, I believe, performing a highly useful work of independent investigation, advice, and publicity. For this important work we are now dependent upon such agencies as the director of public welfare may create.

Besides creating the eight main consolidated departments, the act attempts still further concentration by placing certain commissions, whose independent tenure is left undisturbed by the act, into association with and partial dependence upon certain of the main departments. For example, the act leaves

in existence the old industrial commission, makes no change in its tenure or term, and leaves it with its quasi-judicial and supplementary legislative powers, such as those of deciding upon awards under the Workmen's Compensation Act and making regulations as to safety and sanitation in industrial establishments; on the other hand, the commission is placed for administrative purposes under the director of industrial relations. In a similar way the tax commission is put administratively under the department of finance, the public utility commission under the department of commerce, and the commission for the blind under the department of public welfare. Some uncertainty has developed as to the full meaning and intent of the provisions establishing the connections just indicated. But they at least mean that the appointment and direction of the subordinate officials who perform the investigative and administrative work for the commissions in question are taken away from those commissions (where in Ohio we have suffered less from political influence than in most other offices) and placed in the hands of officers under the complete political control of the governor. It means, for example, that the industrial commission, which is left with its important duties of fixing premium rates for the state industrial insurance and of investigating and determining standards of health and safety in industrial establishments, must determine these rates and standards upon the basis of investigating, inspecting and compiling work done by a staff over which the commission has no control. Yet the industrial commission, not the director of industrial relations, must bear responsibility for the character of these determinations and standards. Similarly with the public utility commission, for all the difficult questions as to change of rates, issue of securities extension or curtailment of services, the power of decision and the responsibility for the decisions and judgments remain with the independent public utility commission as before; but the large staff of engineers and accountants, upon whose work such decisions must be based, is withdrawn from the control of the commission and made subordinate to the director of commerce.

The principles upon which this and other recent reorganizations are based are clear and familiar. There is, first, the principle of economy: save money and effort by eliminating duplication and overlapping of activity; save both in overhead expense and in clerical, inspectional, and other subordinate work, by bringing together into one large department agencies performing closely similar and closely interrelated functions. No serious exception can be taken to this principle. The only suggestion to be ventured here is this: it is possible that improvement in our state administration, by way of eliminating needless duplication and overlapping, can be achieved better by a piecemeal process—dealing particularly with each case of duplication—than by the more sweeping method of reconstruction followed by the recent reorganization acts.

- Secondly, there is the more fundamental principle of concentration of power and authority: concentrate power in order to attract abler men to executive and administrative offices, in order to give freer rein to able men in office, and in order to secure an easier location of responsibility. The reorganization acts attempt to obtain this concentration in two ways. First, place each main administrative department under a single director, so that there shall be no division of power and responsibility in the control of any such department. Second, give the governor complete control over each director by providing that each director shall serve at the pleasure of the governor, in order that public responsibility for the entire directing personnel of the administration may be inescapably fixed upon one conspicuous official, and also in order to make possible a unified executive policy or program and to facilitate coöperation among the different departments.

However appealing this theory of a unified, responsible executive may be, however valid the theory may be in certain of its applications, it may be subject to more substantial and radical qualifications than our leaders in administrative reconstruction are allowing. The points of challenge can be stated in only a brief, summary way, with the hope that they will receive more authoritative consideration than can be given them here.

First, in the matter of the single headed administrative department, is it true that for all such departments unity of power and responsibility is of more importance than continuity of policy and the maintenance of relations of mutual respect and confidence between head and staff? In the recent Ohio reorganization, have we not in too many instances sacrificed good of the latter sort in the effort to gain advantages of the former sort?

Secondly, are we not in danger of carrying too far the idea that popular control is advanced chiefly by placing vast powers in one elected officer, with the expectation that this officer will feel responsibility so certainly fixed upon him that he will be more sensitive to public opinion than he would be if he possessed a narrower allotment of power? Are we not overlooking other equally potent incentives to good service—other incentives which may be weakened by this centralization of power? Are we not greatly exaggerating the ability of public opinion—even an intelligent and alert public opinion—to keep constant observance upon its representatives and to pass satisfactory judgment upon them periodically? In the last question there is reference to what may be a fundamental error of the advocates of the principles which we are examining—namely the assumption that popular control over executive officers is applied chiefly through the election and rejection of these officers at the polls. Popular control of the administration of law is not exercised principally through the popular selection and dismissal of executive officers, one or many. It is equally exercised in enacting directly or indirectly a law determining a method of administration. It is an exercise of popular control to determine that we, the people, want our health or charitable services expertly rather than politically administered, and to determine that such administration in accordance with our desires is more likely to be obtained under a director selected by a continuing council than under a director subject to change every two or four years. Our state university and our local schools are administered as nearly in accordance with public opinion as is or will be our department of commerce. Is there any more reason for making a



director of health or of public welfare, or of education, subject to change with every change of governor, in the interest of popular government, than to make the president of the state university changeable with each change of governor, or the local superintendent of public schools changeable at each mayoralty election? We, the voters, don't want to be consulted on such questions every two or four years. We believe that in the long run the schools will be administered more nearly in accordance with our needs and desires by not calling upon us to pass periodic judgment upon the matter. It may be doubted if either popular government or efficient government is likely to be advanced by placing the health or public welfare director completely under the control of the governor, or by subjecting the public utilities commission and the industrial commission to interference by directors under the control of the governor, or by transferring the peculiar services rendered by the old board of state charities to a director so controlled.

I am a strong believer in the short ballot principle insofar as it means the short ballot—that is the election of relatively few executive officials, popular election not being, in my opinion, a satisfactory method for choosing more than a very limited number of executive officials. I am ready to part company with the short ballot advocates if they contend that, in order to be consistent, we must place the entire control of our administration in the hands of one or a few officials changeable every two or four years. With the exception of the national government of the United States, a few cities of the United States (Pittsburgh, Boston, Cleveland, for example), and some Latin-American governments, no important government—national, district, or local—anywhere in the world is organized on the principles, or on the basis of anything approaching the principles, of narrowly concentrated authority and responsibility—principles upon which many of our reformers of state and city government are defending their plans for consolidated executives.

These recent systems of reorganization give too little weight to such needs as the following: (1) The need of securing continuity of policy in administrative departments having work of a techni-

cal and regulation-establishing character; (2) the need for facilitating the establishment of customs and traditions of non-interference by periodically changing political officers; (3) the need for eliciting the participation of disinterested citizens serving on unpaid boards, exercising powers of investigation, advice and publicity; (4) the need for placing legal authority and responsibility in the particular offices most likely to develop a sense of professional responsibility and pride in connection with the work of such offices; (5) the uselessness of extending the scope of power of any officer beyond the limits of what that officer can actually devote his attention to. Both reason and experience show that, for the administration of many functions, diffusion, rather than concentration, of authority, secures not only more efficient but also more democratic administration.

In this examination of the recent administrative reorganization in Ohio chief attention has been deliberately given to the features which seem of doubtful benefit, on the assumption that it is such features which need discussion rather than the features with respect to which there is less difference of opinion. If the reorganization of 1921 produces substantial changes in practice these changes are in some important instances as likely to retard as to promote the progress of popular and efficient government. If we reconstruct Ohio administrative offices again we shall need to bring in experts as able and as disinterested as those who served us in 1921. And in any subsequent reorganization there is no reason why it should be peculiarly difficult to discriminate among those departments which should be administered by single officials under the political control of the governor, those which require commissions of several members holding overlapping terms, and those which are best administered by single officers appointed by large, unpaid boards, and enjoying reasonable security of tenure; nor should any troublesome confusion result from retaining in some places separate boards having powers of independent investigation and criticism. There is a vast amount of useful coördination that can be accomplished in our state administrative systems without making too much of a fetish out of the principle of one-man responsibility and control.

## THE TREND OF THE DIRECT PRIMARY<sup>1</sup>

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During the past few years there have been numerous proposals to repeal and to modify the direct primary laws, and many changes have been made. In the opinion of those who consider the direct primary one of the leading political reforms of the present century, this activity is due to the machinations of the routed politicians conspiring to restore their power; in the opinion of others, less confident of the merits of the direct primary, it is the natural outcome of the defects which have appeared in the operation of this system. An examination of the more important changes proposed and of those made since 1918, may serve to throw some light on the situation at the present time.

Lack of space prevents the presentation in detail of the proposals for modifications of the direct primary laws which have appeared in the legislatures within the last three years. Of course the mere fact that a certain change was presented in the form of a bill furnished no indication of public opinion, nor of legislative opinion, nor of the strength of the advocates of the change. It is true, however, that several of the measures enacted were passed after one or more defeats.

Bills to repeal the direct primary law were before the legislatures of Maine, Vermont, New York, and North Carolina in 1919, Maryland in 1920, Vermont, West Virginia, and North Carolina in 1921, and New York in 1922. The 1921 proposal (not applicable to town officers) passed the senate in Vermont. The first proposal in North Carolina would have submitted the question of abolition to the voters, while the last proposal in both New York and North Carolina died in committee. The legisla-

<sup>1</sup> See "Recent Primary and Election Laws," by P. Orman Ray, 13 *American Political Science Review*, 264 (May, 1919).

tive reference library in the latter state reports that "the primary law has come to stay."

Bills designed to restore the convention specifically for minor state officers were introduced in Iowa, in 1919 and 1921, and in Massachusetts in 1922. A joint resolution for a constitutional amendment to accomplish practically the same purpose was introduced in Ohio in 1919. Bills to restore the convention for certain offices appeared as follows: West Virginia, for all areas larger than a county, 1919, 1921; Indiana, for all except local offices, 1919; Iowa, for all except local offices, 1919, 1921, and for judges, United States senator, and presidential electors, 1921; Montana, for all areas greater than a county, including delegates to national conventions, 1921; Wyoming, for practically all offices, 1921; Washington, for all except local offices, conventions to be limited to persons who should file certificates of candidacy, 1919; Texas, for judges, 1921; Missouri, for practically all offices, with the convention action to be approved at a primary, perhaps, 1921; for state offices, United States senator, and judges of the court of appeals, 1921; for judges, 1921; West Virginia, for judges, 1921, each party to hold a "meeting." Bills to eliminate the party designation, thus establishing usually nonpartisan nominations and elections, appeared in Massachusetts in 1919 and 1922, applicable to all state and county offices; in Wisconsin, 1921, applicable to county offices; in North Dakota, 1919, applicable generally (passed in part in 1921); in Wyoming, 1921, applicable to judges and county superintendents of schools, apparently dispensing with a primary altogether.

In the following states bills providing some kind of pre-primary endorsing convention appeared: Massachusetts (several), Minnesota, New York (twice), Iowa, Wisconsin (twice), Nebraska (twice) and, Wyoming. A proposal to restore the presidential preference primary was made in Iowa; in Indiana a proposal to extend the primary to include candidates for governor and United States senator was introduced, containing a plan for permitting any party voter to attend and participate in a state convention, while assuring equitable representation of the counties. In Oregon, it was proposed to have printed after the name of

every candidate for delegate to a national convention the clause: "I will support the candidate for president receiving the highest number of votes in the state," and permitting a candidate to insert "not."

In the following summary of changes enacted, the states are arranged according to geographical location in order to facilitate a comparison of the tendencies of states within different sections of the country.

Vermont<sup>3</sup> has repealed the presidential primary and now permits the election of delegates to national conventions by state conventions called under the rules of the state committees. The law makes a change from the "open" to the "closed" primary. Separate primary ballots are now provided for the different parties<sup>4</sup> instead of separate party columns on a single ballot, the voter to receive the party ballot he wishes to vote.

Massachusetts has provided for additional women members on state political party committees.<sup>4</sup> The amount which a candidate for governor or for United States senator may spend for his nomination or election [both?] was increased from \$2500 to \$5000, and the amount permissible to candidates for other state offices or for United States representation, from \$1500 to \$3000.<sup>5</sup>

In New York,<sup>6</sup> conventions have been restored for the nomination of candidates, other than presidential electors (nominated by the state committees), to be voted for by all the voters of the state, and for justices of the supreme court (elected in nine districts, not the highest court of the state). Delegates-at-large to national conventions are hereafter to be elected at state conventions; national district delegates and delegates to the state and judicial district conventions are to be elected at official primaries. The assembly district is made the unit of representation for the state conventions, and the number of delegates is to be determined by party rules if based substantially on the

<sup>3</sup> 1921, No. 7.

<sup>4</sup> 1921, No. 9.

<sup>4</sup> 1921, ch. 388.

<sup>5</sup> 1920, ch. 149.

<sup>6</sup> 1921, ch. 479.

relative party strength of the districts. Certain regulations are provided for the state conventions. Upon the call of the official roll, delegates must rise and declare their choices for temporary chairman. The vote on the nomination of candidates is to be given viva voce unless the chairmen announce the vote of their respective delegations without objection. Summary court proceedings may be instituted upon the petition of any person claiming to have been deprived of a right of participation in a primary election, convention, or committee, or upon the petition of the chairman of a political committee, to be heard upon such notice as the court may direct. A general revision of the New York election laws was enacted in 1922.

In 1920, the New Jersey legislature passed a general revision of the election law, running through 242 pages.<sup>7</sup> Considerable improvement was made in arrangement and clarity, but the length remains objectionable. Few material changes appear to have been made. The regulation of political expenditures is very elaborate. It is made the duty of the treasurer of every party committee within ten days after the annual organization of the committee, to file a statement of the money received by or on behalf of the committee, containing the names of all persons from whom it was received and recording the purpose of all expenditures over five dollars. A scheme for requiring campaign managers to deposit all their funds with and expend them through a national bank, a state bank, or a trust company, is devised. No manager may authorize any expenditure unless the amount is on deposit. There is to be no expenditure by anyone unless on a written order made on a fixed form by a campaign manager. The payee must make affidavit that the amount justly due is stated, that all purposes are truly stated, and that no person but himself is interested directly or indirectly in the payment. The treasurer or cashier of the bank or trust company must file all deposit slips and vouchers in the proper public office. Any candidate for nomination may hire only one watcher, and each political party may hire two challengers only, for each polling

<sup>7</sup> 1920, ch. 349.

place. No printing or distribution of posters or cards on bill boards, dead walls, trees, posts, or the windows of buildings is allowed. In 1921, the preceding act was revised to the extent of one hundred pages.<sup>8</sup> The expenditures permitted have been doubled. Those who would be delegates to national conventions may now spend \$10,000 for the purpose. As New Jersey sends twenty-eight delegates to a national convention, if two candidates should seek each place, \$560,000 could legally be expended within each party. One is led to inquire here whether the law is designed to promote and encourage reckless and needless political expenditures; whether the previous limits were so low as to injure the public interest; or whether the framers of the new law, believing the requirements might prove effective, desired to legalize and thus permit without embarrassment, the expenditure of an amount which they consider necessary?

The Pennsylvania legislature<sup>9</sup> has restored to nomination on party tickets at party primaries the candidates for mayor, member of the council (five), controller, treasurer, and all other elective officers of third class cities (between 10,000 and 100,000 population); and proceeded two years later<sup>10</sup> to take similar action regarding all candidates for elective offices in cities of the second class, and also candidates for the supreme and superior courts and all courts of record except those elected at the municipal election in odd years. The order of the names of candidates on the primary ballot is hereafter to be determined by lot instead of following the alphabetical order of the first letters of those names.<sup>11</sup>

In Kentucky, an act of 1920<sup>12</sup> provided that the governing authority of any party which at the last presidential election cast 20 per cent of the total state vote, might prescribe the manner in which the candidates for state-wide offices should be nomi-

<sup>8</sup> 1921, ch. 196.

<sup>9</sup> 1919, No. 360.

<sup>10</sup> 1921, Nos. 189 and 198.

<sup>11</sup> See "Voters' Vagaries," by R. C. Brooks, in 10 *National Municipal Review*, 161 (March, 1921).

<sup>12</sup> 1920, ch. 72.

nated, with the limitation that, if this authority should decide to nominate by a primary, then the general state primary election law should apply. The primary act was declared no longer applicable to judges of the court of appeals or of the circuit court,<sup>13</sup> and to relieve persons from seeking such nominations and from declaring party loyalty, such nominations were allowed to be made by resolution of the appropriate party committees or by the application of two reputable electors of any political party, with a decision at the primary. Any candidate defeated at a primary election was made ineligible for the same office during the same year.<sup>14</sup>

Missouri has repealed an awkward arrangement<sup>15</sup> for so-called nonpartisan, but really bipartisan, nomination of judges for circuit courts in cities and counties having 350,000 population. Alabama has reduced by about one-half<sup>16</sup> the amount of the assessment which party committees had been authorized to make upon primary candidates and provided for recording the number of each voter's ballot for use in contested elections, but apparently without adequate effort to preserve secrecy.

In Indiana,<sup>17</sup> it has been provided that the name of no independent candidate should be printed on the general election ballot unless he should have filed his declaration thirty days before the primary. A general revision of the Illinois primary laws, which made no important changes, was held unconstitutional; minor changes in 1921 provided for the nomination of circuit judges by conventions and changed the date for the general primary to April.<sup>18</sup>

Wisconsin has adopted nonpartisan nominations for candidates for county offices in counties of 250,000 population, and repealed an excessively elaborate provision for a so-called coupon ballot, though not the ballot ordinarily designated by that term.<sup>19</sup>

<sup>13</sup> 1920, ch. 99.

<sup>14</sup> 1920, ch. 156.

<sup>15</sup> 1919, S. B. 193.

<sup>16</sup> 1919, No. 669.

<sup>17</sup> 1921, ch. 198.

<sup>18</sup> 1919, p. 475, S. B. 454; 1921, pp. 431-433.

<sup>19</sup> 1919, chs. 60 and 566.



North Dakota requires the nonpartisan nomination and election of all county officers, judges of the supreme and district courts, and state and county superintendents of public instruction.<sup>20</sup>

Minnesota has made official the pre-primary convention, a not unusual unofficial institution in other states.<sup>21</sup> On the second Tuesday in March in every even year, delegates are elected from each election district to county conventions. Persons wishing to be delegates file applications for places on the primary ballot with the county auditor. The regular election officials preside at this pre-primary election. Party enrollment is required for participation in the selection of these delegates and no voter so participating can change his party for the June primary. County conventions elect delegates to the congressional district and state conventions, the latter to meet during the last seven days of March and in presidential years to select national delegates. The latter two conventions may endorse candidates for nomination to the various offices within their respective areas and this endorsement is stated on the primary ballot. No aspirants for nomination are permitted to file their petitions until after the endorsing conventions have been held. The county committees are to be elected by the county conventions and the state committees by the state conventions, each endorsed candidate being authorized to select one additional member for the latter. The state committees were formerly selected by party councils consisting of the party nominees and holdover officers.

In South Dakota, several of the more unique features of the Richards' primary law of 1918 have been repealed: the method of determining the leading principles of the party platform by primary vote;<sup>22</sup> the definition of the "paramount issue," and the gubernatorial and presidential joint debate requirement;<sup>23</sup> the primary vote endorsement of a national paramount issue, constituting an instruction to the national delegates to vote for this issue three times in the national convention, and primary endorse-

<sup>20</sup> 1919, ch. 117.

<sup>21</sup> 1921, ch. 322.

<sup>22</sup> 1921, ch. 331.

<sup>23</sup> 1921, ch. 329.

ment for appointive offices;<sup>24</sup> the arrangement for endorsing candidates for postmasterships<sup>25</sup> and the state publicity pamphlet.<sup>26</sup> A bill passed the legislature<sup>27</sup> providing for the nomination of all state officers except governor, and the election of national committeemen and delegates, by state conventions, but was defeated on a referendum vote, 65,000-82,000. A very stringent limitation<sup>28</sup> on customary campaigning methods made it unlawful for any candidate, political committee, or other person, to offer anything of value to any person to work at the polls in the interest of any party or candidate, to influence any person to come to the polls, or to remain away, or to vote for or against any candidates. Separate nonpartisan primary and election ballots for judges of the supreme, circuit, and county courts were adopted.<sup>29</sup>

In Nebraska, an act of 1919<sup>30</sup> providing for delegate conventions to nominate the candidates for minor state offices was defeated at a referendum in 1920, by a vote of 49,000 to 133,000, the vote on the proposition being 38 per cent of the total primary vote. The referendum has been invoked on two acts of 1921.<sup>31</sup> One excepts from the direct primary law delegates to state, congressional district, and national conventions, and members of party committees. Party caucuses would select delegates in the election precincts. The state conventions are authorized to "transact such other business as may properly and legally be entertained by such conventions." The following section of the existing law was omitted: "No action shall be taken by said state conventions either for or against any person who is or may be a candidate for any office that is to be voted on at the next general election." The second extends the requirement of registration and party enrollment to all precincts and districts

<sup>24</sup> 1921, ch. 330.

<sup>25</sup> 1921, ch. 332.

<sup>26</sup> 1921, ch. 333.

<sup>27</sup> Special session, 1920, S. B. 48.

<sup>28</sup> 1921, ch. 220.

<sup>29</sup> 1921, ch. 224.

<sup>30</sup> 1921, ch. 90.

<sup>31</sup> 1921, chs. 85 and 93.

other than cities of 7000 population and over, where the requirement now applies.

It is difficult to explain what has happened in Montana. An act of 1919<sup>22</sup> restoring conventions for the nomination of certain officers, referred to popular vote by the legislature, was defeated, 60,000-77,000. An emergency act of the special session<sup>23</sup> repealing the presidential preference primary was held subject to the referendum by the supreme court and was also defeated, 60,000-80,000. The special session seems to have repealed the enactment of the preceding regular session noted above.

It also passed a measure for the direct election of delegates to national conventions but eliminating the preference feature, substituting for a Wisconsin type of "open" primary a declaration of party affiliation at the primary, providing for the rotation of candidates' names on the ballot, permitting the selection of national committeemen by the state committees, and correcting some of the out-of-date sections of the popularly initiated act of 1912. On referendum, this was defeated,—66,000-74,000. An act of 1921 struck out of the presidential primary law the provision limiting each elector to vote for only one candidate for delegate to a national convention and one candidate for nomination as presidential elector.<sup>24</sup>

Wyoming has abolished the publicity pamphlet for the primary and the general election.<sup>25</sup> Idaho<sup>26</sup> has substituted state convention for primary for the nomination of congressional and state candidates, and has authorized state committees to call conventions to elect delegates to national conventions. County conventions elect delegates to state conventions and members of state committees. The primary officials, to be appointed by the county committees and to serve without pay, are to provide separate polling places for the parties at party expense and may

<sup>22</sup> 1919, ch. 113.

<sup>23</sup> 1919, ch. 27.

<sup>24</sup> 1921, ch. 206; *Revised Codes* of 1921, secs. 671-676.

<sup>25</sup> 1919, ch. 36.

<sup>26</sup> 1919, ch. 107.

reject the votes of persons adjudged not bona fide members of the party. Primary candidates are required to affirm that they believe in the principles set forth by the party in which they seek nomination, and that they are not becoming candidates as members of any partisan or nonpartisan organization other than that party; in addition they must file certificates of a county chairman, or a majority of the members of a county committee, or of five reputable members of the party, that have been members of the party for two years. The affidavits of the five party members can be contradicted by the affidavits of any other five reputable party members, and the issue decided by the courts. Delegates to state conventions are paid the amount of their carfare by the state. In 1921 a strong attempt to restore the direct primary succeeded in the house but failed in the senate. The houses then disagreed as to the time of reference on a proposal to submit the matter to the voters.

Colorado has abolished the use of voting machines.<sup>37</sup> In Nevada, county committees were authorized to certify to the county commissioners the names of those persons in each precinct from whom the commissioners could select primary election officers who are to serve without remuneration in contrast with the regular election officials.<sup>38</sup> County conventions, consisting of delegates selected at party mass meetings in each precinct, instead of the candidates of each party nominated at the primary, are to meet before, instead of after the primary, and select delegates to state conventions which replace the former state party-council type of convention. What use it is intended the convention should make of the power to "take such further action consistent with the provisions of this act concerning the affairs of their party within the state as they deem proper," is doubtful.

Washington<sup>39</sup> has substituted declaration of party at the primary polls, subject to challenge, for the previous party enrollment requirement, and denied a defeated primary candidate the privilege of becoming the candidate of another party at the

<sup>37</sup> 1921, ch. 117.

<sup>38</sup> 1921, ch. 248.

<sup>39</sup> 1919, ch. 163.

general election. State and county conventions were officially recognized for other than nominating purposes,<sup>40</sup> and advisory state platform committees were provided for, to hold public hearings during the sessions of the conventions, which were admonished to make clear and concise statements of their principles and legislative programs. The closed primary was restored<sup>41</sup> and the law for registration, quadrennial outside incorporated cities and towns and biennial within them, was extended.

Oregon<sup>42</sup> forbids an unsuccessful primary candidate to become the candidate of any other party or an independent candidate. California has taken practically the same action<sup>43</sup> and the legislature passed a resolution<sup>44</sup> memorializing Congress to enact a presidential primary law requiring the nomination of all candidates on the same day in all the states. Arizona<sup>45</sup> has excepted from the amount which candidates may spend to secure their primary nomination "any sums of money expended for stationery, postage, printing, or advertisements in newspapers and picture shows." In New Mexico, a sort of double coupon ballot was adopted.<sup>46</sup> Each ballot is to be numbered on two corners. One of these numbers is to be detached when the election officer receives the ballot from the voter, and the other, folded and pasted down before the ballots are distributed, is not to be opened unless necessary in deciding a contested election. The number of the ballot cast by each voter is recorded.

But little has yet been done in the way of careful and systematic analysis of the operation of the direct primary. Studies of the New York and Michigan laws in this REVIEW have indicated some of the difficulties.<sup>47</sup>

<sup>40</sup> 1921, ch. 176.

<sup>41</sup> 1921, ch. 177.

<sup>42</sup> 1921, ch. 420.

<sup>43</sup> 1921, ch. 710.

<sup>44</sup> Assembly J. Res. No. 7.

<sup>45</sup> 1921, ch. 172.

<sup>46</sup> 1919, ch. 141.

<sup>47</sup> A. C. Millsbaugh, "Operation of the direct primary in Michigan." 10 *American Political Science Review*, 710 (Nov., 1916); H. Feldman, "The direct primary in New York State." 11 *American Political Science Review*, 494 (Aug., 1917).

The New York law (1913-1921) required designation petitions in all cases. Each year of a state election, however, the major parties have held "conferences" or "unofficial conventions." In no case since the adoption of the primary has an independent candidate in a state-wide contest defeated the recipient of a conference endorsement, that is, the regular organization candidate. Can it be that no equally fit candidate has entered the lists against the "slate," or is it possible that organization support is so overwhelmingly decisive that successful opposition becomes hopeless? The delegates to these conferences were not chosen by the party voters at all except by sufferance. True, unofficial primaries were frequently held, but so sure were the leaders in one case as to who would be delegates that several hours before the polls closed the chairman of the New York county committee announced the list of delegates and alternates. Primary contests have been the exception rather than the rule, especially in the cities.<sup>48</sup> The extent of participation in the primaries, a most important consideration, has declined materially during the years the primary has been in effect.<sup>49</sup> Consequently, one can hardly find much fault with the logic of the political leaders when they conclude that the voters do not care much for the direct primary.

Dr. Frank E. Horack,<sup>50</sup> after a study of the Iowa primary, while concluding that it should be continued largely as it is, states that for the last three primaries the Democrats have not

<sup>48</sup> The contest record for Monroe County, including the city of Rochester, since the primary was adopted follows: 1914, none; 1915, Republican, none—Democratic, one assembly contest; 1916, Democratic, none—Republican, one United States representative contest; 1917, none; 1918, Democratic, one United States representative contest—Republican, one assembly contest; 1919, none; 1920, none. In King's County (Brooklyn) for the twenty-three assembly nominations, there were, for the years 1917-1920, 23, 23, 24, 26 Republican candidates, respectively, and 26, 26, 28, and 25 Democratic candidates. These instances are somewhat extreme.

<sup>49</sup> This participation, the vote for the highest office in the Republican primary being expressed in percent of the party enrollment for the year, was, for New York City (1914-1920): 45, 36, 37, 35, 21, 17, 16. For the Democratic party the record was: 43, 41, 27, 1917 not obtained, 27, 21, 23.

<sup>50</sup> *Iowa Journal of History and Politics*, January, 1921.

had a single contest for a state office, that the ballots for sixty-eight counties out of ninety-nine (those available) showed that 68 per cent of the county offices were uncontested in the Republican primary and 95 per cent in the Democratic. He comments: "Interest in the primary seems to have been on the decline since 1916, judging by the number of candidates," and "Indeed, party organization really controls the primary to a considerable degree." Dr. Charles Kettleborough says,<sup>51</sup> "An inspection of the primary election returns in Indiana and a casual familiarity with the adventitious processes employed, show conclusively that these powers (to name the candidates for public office and control the party machinery), are vested as securely in the party managers as they formerly were."

References to the direct primary in the messages of thirteen governors in 1921 furnish evidence of official opinion, showing wide differences.<sup>52</sup>

Press comment is also worthy of some attention; although it is well known that editors, like other mortals, are prone to believe what they wish to believe, and that it is probably less difficult for almost any other group to change its position on public questions—otherwise the much desired oracular reputation of editorial comment would be threatened. Opinions from about a score of important daily newspapers, from New Jersey to Texas and Oregon, indicate a prevailing sentiment of dissatisfaction; though some express the view that the direct primary has been an improvement and will not be repealed, and this latter attitude has been strengthened by the results of the primary elections of the present year.<sup>53</sup>

<sup>51</sup> 10 *National Municipal Review*, 186 (March, 1921).

<sup>52</sup> See "The Direct Primary weathers the Storm," in 10 *National Municipal Review*, 322 (June, 1921).

<sup>53</sup> The *Newark Evening News* has consistently favored the primary since before its adoption in the state. It states that while the law is not considered perfect by any means, there is a profound public sentiment against doing away with it until something better is discovered. As to effects, "so far as Essex county is concerned, the direct primaries resulted in the last three years in nominations for members of the state assembly and the board of freeholders that would not have been possible had the selection been left to the organization-controlled convention." Two points of view, not necessarily in conflict, come from Penn-

How may the evidence be summarized? One of the most striking facts is the almost entire absence of any serious effort to extend the so-called presidential primary or to remedy its defects. In 1920, it was, from any point of view, a miserable failure. With the possible exception of Oregon and California, the definite movement has been away from the more direct toward the less direct method. Congress has done nothing, assuming that it could do anything after the decision of the Supreme Court in the Newberry case. Senator Norris has introduced a resolution for a constitutional amendment to allow Congress to provide for independent nominations for the presi-

sylvania: "We have found that the direct primary system has raised the standard of public servants. On the whole, Pennsylvania is satisfied with its operation and there is no indication that it will ever be repealed; more likely it will be strengthened." (*Philadelphia North American*). "The machine invariably names the nominee. The political organization gets behind a candidate with power and money. Independent movements are usually broken up by bringing fake candidates into the field for the purpose of splitting up the opposition. Primaries can almost always be controlled—always save when there is a tremendous uprising—by the politicians. Nevertheless, the primary laws are apparently permanent" (*Philadelphia Inquirer*).

Editorial opinion from Ohio is harmonious. The *Plain Dealer* reports: "The primary in the present form is not accepted as final and is under attack from about every direction—mainly upon certain defects, such as the necessity of declaring one's political faith, and the manipulation of the primary by political machines." The *Cincinnati Enquirer* believes the primary has "fallen into great disrepute and disregard if indeed it ever was entitled to the approbation of the public. Primaries are today in Ohio more brazenly manipulated by the politicians than ever were conventions. . . . There has been no blocking of the channels for corrupt practices and the use of money." The *Fort Wayne (Indiana) Journal Gazette* asserts that the primary has not been satisfactory in operation or results, and that it is under attack from many quarters. The most noted defects are its failure to improve the general character of politics, obtain higher-grade men for office, its cost of operation, and the length and expense of primary campaigns. The last Democratic state convention frankly denounced the law; the Republican convention took similar ground in more guarded terms.

The *Detroit News* is favorable to the primary, believing it is here to stay although "lack of public interest prevents the best results from any system." Mr. Milton R. Palmer, of the Michigan legislature, replies at the request of the *Detroit Free Press*: "The primary system has changed methods but has made little difference on results. About the same class of people are candidates for office and they manage public business in very much the same way." "To a large extent the press has taken the place of the 'machine' in Michigan politics." "The conclusion is that the bosses are more numerous and less responsible."



dency after the national conventions have adjourned as a means of threatening them into more careful and popular action. One asks, where are the friends of the direct primary; can it not succeed in nominating them?

Further, it seems that, excluding the South, the states fall roughly into two groups. First, there are those, usually populous and urban, and chiefly eastern, in which fairly stringent party tests have been maintained by law or tradition, and in which the party organizations, with greater effort and inconvenience, it is true, still manage nominations to a very considerable degree.

The *Peoria (Illinois) Journal* considers the primary permanent, as no attack has been made upon it by any considerable body of citizens. The *Des Moines Capitol* believes it might be a satisfactory plan to nominate all the minor officers at caucuses and limit the primary to United States senator and governor, and until some such compromise can be reached would retain the present system. "The greatest objection to the primary is that it offers rewards to those who make the biggest promises on the stump." The *Des Moines Register* thinks there is a great deal of criticism of the present primary—the methods rather than the principle. "The feeling is that we went altogether too far towards government by direct popular vote." The *Sioux Falls (South Dakota) Argus-Leader* says: "If you understand our law, you have progressed farther than most of us here. Inasmuch as in most cases the proposal-men are elected by only a few voters, the plan is an open invitation to the building up of machine politics. . . . The remainder of the law is not unpopular. I question whether the personnel of office-holders has been improved by any of the primary laws." The *Aberdeen (South Dakota) American* states that the primary is attacked by the dominant Republican party, notwithstanding an impregnable machine organization can be created under it. A return to the simple direct primary, with convention nomination of state officers, is the ideal most generally sought.

The *Capitol News* (Boise, Idaho) forecasts the reenactment at some future date of the primary for state and congressional office. A former newspaper man holds that the state-wide primary invited the incompetent who could fool the people, that the sentiment three years ago was so strong against the primary that it was almost repealed outright, and that a fight is still waged by friends and foes. The *Portland Oregonian* says editorially: "When the public understands a little better that under the primary party organization is supplanted, and individual and personal politics takes its place, with no improvement over the old condition not wholly due to public sentiment, there may be invented and adopted a better method of selecting candidates for office." "Every candidate is his own party and the goat has as good a chance as the sheep—if he makes enough noise." "There is not a vast difference in virtue between the opportunity of choice among self-appointed candidates often wanted only by themselves, and the privilege of perfunctorily ratifying candidates who are at least wanted by somebody." The *San Francisco Chronicle* thinks the primary "impairs party respon-

Here a point should be noted. It is common to argue that the opposition of the party organization is proof that it cannot control the primary. The primary opens a field for the disgruntled and those who believe they have not been properly cared for. This is a form of independence which probably profits the public very little. Naturally, since the organization could deal with it with less effort, though ordinarily little more effectively, under the convention than under the primary, the organization prefers the convention system because it conserves more strength and money for fighting the other party.

sibility, the only alternative of personal government," that its specific defects have been: the supplanting of public conventions by the private caucus; intra-party quarrels; enormous sums spent in campaigns; the substitution of orators for business men in the conduct of public business.

The *Houston Chronicle* admits that "primary elections during recent years have been very, very disappointing, and the candidates not of the high character seen in former years. . . . Many of our best citizens are clamoring for a return of the convention method." Mr. Tom Finty of the *Dallas Journal* states: "Within the last six or eight years there has been a visible growth of expressed opposition to the new system. It is my opinion that a majority of the people are against it but most of them hesitate to speak aloud because they are obsessed by the promoted belief that the 'people' are hog-wild over the system. . . . It has transpired that only men of wealth or who are backed by men of wealth can run with any hope of success. One candidate for governor spent \$82,000 to get the nomination."

The results of the primary elections of the present year, in Indiana, Pennsylvania and Iowa, have revived the discussion of the effects of this method of nominating candidates. The *Philadelphia North American* considers that the success of Pinchot "demonstrated in memorable fashion the supreme value of the open primary as an instrument of democracy." David Lawrence, in a Washington dispatch to the *New York Evening World*, referring to the influence of women in these primaries, writes: "Women are believers in the direct primary system and will fight tooth and nail a return generally to the convention system." The *Chicago Daily News* views the nomination of Pinchot as a striking vindication of the direct primary. At the same time there has been a revival of criticism on account of the expense of an active primary campaign. The *Baltimore Sun* holds that "there can be no step backward from the primary to the outworn convention system with its bossism, its deals and its thwarting of the popular will," but notes also that: "The direct primary system has some grave defects. They must be got rid of, if possible; but how to do it is a question." And the Washington correspondent of the *Seattle Times* maintains that there is a distinct trend against the direct primary, though admitting that it may have been interrupted by such popular successes as these of Pinchot and Beveridge (*Literary Digest*, May 27, June 3, June 17, 1922).

Then there are those states, usually less populous and less urban, chiefly west, north-central or mountainous, where there is possibly more individual thinking, where at any rate party ties sit more loosely, perhaps because of frequent insurgent movements, largely agrarian. The voter desires to vote in the primary of the party whose candidates will be elected. Primaries are by law, or become by practice, open. Party labels are largely meaningless and the voter so regards them. At present, conservative Republicans are reported to be coaxing and adjuring the Democrats to come into the Republican primary and help them unhorse LaFollette.<sup>44</sup> It is easy to denounce those who oppose this inter-party invasion, but it must be recognized that there may be honest Republicans and Democrats, however indistinct the line between them, who do not believe, let us say, in the program of the Nonpartisan League. They resent the transformation of either old party into an agent of the league. It is safe to say that a great deal of the recent primary agitation in Minnesota, Nebraska, Montana, Idaho, and Washington is due to the activities of the league.

It may be questioned whether there can be really permanent and meaningful political groupings in state politics. If there can be, there seems no justification for allowing members of one party to select the candidates of another. Such a mixture of principles and candidates would be absurd. There can be no party responsibility that way. If, on the other hand, there cannot be permanent groupings, let the voters break into groups, refuse to continue the present party fiction, eliminate the primary, and adopt proportional representation for representative bodies, and nonpartisan primaries or an effective system of preferential voting for elective executive officers. That would be logical and there is a tendency in that direction. If there cannot be somewhat stable political groupings based on real or fictitious differences, then we are through with party government as we have known it, and just what will follow is difficult to predict. Popular government has been so far party government, least so

<sup>44</sup> Walter J. Millard, Field Secretary, American Proportional Representation League and National Municipal League.

perhaps in Switzerland, and a regrouping to settle the questions of each succeeding election is imaginable but hardly practicable, except for ideally intelligent and devoted citizens, such as our political workers would call high-brow goo-goos. Even then the method would meet serious obstacles in populous states of considerable area.

There is undoubtedly a popular sentiment for the primary which is in a degree justified. In part, however, it is due to the fact that the first effective regulation of registration and voting processes in some states came along with the direct primary. Part of it, further, is due to the belief in popular capacity to perform any political task, such as is evidenced in the supposedly popular hostility to the abolition of elective offices. The people are, after all, little more distrustful of a political convention than they are of a legislature, and what saves the legislature is the fact that its functions cannot be taken over so readily simply because they are more numerous. But as legislatures exercise more real control in proportion as they eschew details and avoid trying actually to govern, so it is possible that an intelligent electorate will be more effective by means of similar tactics. No numerous private body follows the direct primary scheme in its elections. A committee on nominations is the common practice. Whether the conditions of such elections are inherently different from political elections is an interesting question.

People believe the primary offers a better agency of popular control chiefly because it seems to force the successful candidate for nomination to credit his success to the people, to become their man. But in every extensive primary campaign there are numerous intermediaries. Influential friends, newspaper owners, contributors to campaign funds, and especially organized groups, will play a part which the candidate will feel obliged to recognize. The honest convention system certainly tended to make the candidate feel an obligation and duty toward his party. That seems unobjectionable if parties are based on principles, and government on parties. If principles vanish, obligation to party becomes obligation only to a vote-getting organization or to its leaders. If the decline in popular responsiveness of their conventions resulted in part from the disappearance of issues between parties, it would seem that a revival of a real significance

in party conflict might lessen the reasoned opposition to the convention.

What about the politicians? Their services are commonly conceded to be valuable and they seem to be with us still. Is it not strange that, in state after state, governors and legislators, nominated by direct primary, seek its abolition? What is the explanation of the fact that in Nebraska, after the act of the 1919 legislature restoring the convention for minor state officers was defeated on a referendum, the 1921 legislature passed an act providing for state and county conventions to precede the primaries, the delegates to which should be elected at party caucuses? If the legislators believe in the direct primary, why do they attempt to destroy it? If they do not believe in the primary, how were they nominated? If they do not believe in the primary, but know the people will punish those who touch it, truly their persistence is evidence of a willingness to sacrifice themselves for the public good. Perhaps the enemies of the primary accept the famous Burkian theory of a representative's function. May it not be true that the politicians resent the primary as lawyers would resent a movement for the submission of legal cases to decision by popular vote?

The results of the primary in several states this year have strengthened the convictions of many who believe in the direct primary. It may be agreed that, granted the primary nominees could not have succeeded under a modified system, the present primary has justified itself. So much opposition to the probable recipients of convention nominations would under any popular system have warranted a referendum. It should not be overlooked, however, that there was no general movement against the organization in Pennsylvania; both regular senatorial candidates were nominated without serious opposition. Roosevelt and Hughes were quite as distasteful to the Republican organization in New York years ago as was Pinchot this year in Pennsylvania, but they were nominated by convention. Beveridge first received a United States senatorial nomination in Indiana long before the direct primary was adopted. The direct primary affords the party voters an excellent chance to register a sharp rebuke to their would-be leaders, and for this purpose such an

opportunity should be preserved within easy reach of the rank and file.

The writer's proposal for primary reform has been set forth elsewhere.<sup>44</sup> The plan for a preliminary recommending convention is frequently advanced by theorists, practical politicians and officials. It has merit. But the participation in one primary is already too slight, and South Dakota seems to prove that participation in a pre-primary primary will be less. The failure of the voter to attend the primary should be recognized as a fact. Party committees should be elected at the regular election by the full party membership. Designation of candidates for committee membership could be made by petitions of say ten persons residing anywhere in the state. This would permit a group of leaders to take the party sense on their leadership at little expense, and would make the candidate's petition a real advertisement for him. The party committeemen chosen at the general election could be assembled before the succeeding election and permitted to recommend candidates by recorded, published vote, from a list of those who should have filed designating petitions similar to those required from committeemen. Independent designation should be permitted and the primary employed only to settle contests. This plan seems to possess the following advantages: It would permit effective party conference; it would secure the choice of committeemen by, and their responsibility to, the full party vote; it would regularize what is now the practice of an irresponsible organization in many states, and permit a drafting of candidates in the states where now everything is left to the self-advertisers; it would not lessen the opportunity which the primary now affords, of combatting objectionable candidacies and reducing the organization to submission.<sup>45</sup>

<sup>44</sup> 10 *National Municipal Review*, 603 (December, 1921).

<sup>45</sup> The legislative reference department of the Ohio state library is preparing a digest of the primary laws of all the states. The legislative reference section of the New York state library has conducted by questionnaire an inquiry into the operation of the primary in many states based on the opinions of informed persons in the states. The platforms of both major parties in Maine advocate the repeal of the direct primary law. The bureau of research in municipal government of Bowdoin College has collected the opinions of many political scientists, politicians, and officials, throughout the country regarding the direct primary, as a guidance for legislative action.

## AMERICAN GOVERNMENT AND POLITICS

**Federal Control over Industry.** Legal history teaches two doctrines, which seem at first glance diametrically opposed to each other, with reference to the current agitation concerning the dangers of federal encroachment. First, that the agitation, in so far as it is called out by a temporary accidental state of affairs due to the war, is ephemeral. On the other hand, the essential facts involved are of a type that are always with us. In other words, federal encroachment, when stripped of the mask and guise that temporarily makes it seem dreadful, is a perfectly natural phenomenon quite familiar to students of Anglo-American law, and, for that matter, of other legal systems.

As a bogie it appears periodically to frighten us. The last time it wandered on earth was thirteen or fourteen years ago. A flood of periodical literature, at least two books, the major part of a session of the American Political Science Association, and two of the leading addresses before the American Bar Association, all in 1908, make up the bulk of the recent, though not of the current, bibliography of the subject.<sup>1</sup> The state of mind of the country at that time was humorously illustrated at the Gridiron Club dinner of 1907. There one who was supposed to impersonate the President of the United States of ten years later erased the chalk lines which divided the states on a map of the United States. What prompted such feelings at that time was, of course, the aggressiveness of the administration of Theodore Roosevelt which not only made the average citizen feel the presence of the national government as a factor in his daily life, but which had the further merit or demerit of being well advertised. The big stick

<sup>1</sup> *Proceedings of the American Political Science Association, 1908*: Leacock, "The Limitation of Federal Government;" Ford, "The Influence of State Politics in Expanding Federal Power;" Moore, "The Increased Control of State Activities by Federal Courts;" Anderson, "Increase of Federal Power under the Commerce Clause of the Federal Constitution." Papers before the American Bar Association, 1908: Hanford, "National Progression and the Increasing Responsibilities of our National Judiciary;" Farrar, "The Extension of the Admiralty Jurisdiction by Judicial Interpretation." Books: Pierce, *Federal Usurpation* (New York, 1908); Moseley, *Federal Supremacy: A Study of the Power of Congress Over Railroads* (Privately printed, 1907).

of the cartoonist was perhaps as effective as the list of new statutes, or the prosecutions under old statutes attributable to this administration, in awakening any sticklers for states rights who still remained in the South and even in winning converts in the North to an appreciation of our country's peril. The words of Theodore Roosevelt uttered in 1907 were still fresh in the mind of the country:

"State rights should be preserved when they mean the people's rights, but not when they mean the people's wrongs; not, for instance, when they are invoked to prevent the abolition of child labor, or to break the force of laws which prohibit the importation of contract labor to this country; in short, not when they stand for wrong or oppression of any kind or for national weakness or impotence at home or abroad. . . . The states have shown that they have not the ability to curb the power of syndicated wealth, and therefore in the interests of the people it must be done by national action."<sup>2</sup>

A federal child labor bill had been introduced and was being met by serious opposition from the South. Furthermore, as one of the speakers before the American Political Science Association said, "The attention of the country has been recently sharply called to the matter of state activities by the federal courts in several cases decided before the Supreme Court."<sup>3</sup> The text makes clear that he refers particularly to the cases of *Ex parte Young*<sup>4</sup> and *Hunter v. Wood*,<sup>5</sup> with reference to state attempts to regulate railway rates.

During the administration of President Taft, the national government continued most of the activities of the preceding administration, but with much less noise. And it so happened that the failure of the child labor bill and the holding of the Supreme Court that the Federal Employers' Liability Act was unconstitutional, allayed the fears of federal usurpation for the time being.<sup>6</sup>

<sup>2</sup> Quoted in Pierce, *op. cit.*, p. 270.

<sup>3</sup> Moore, *op. cit.*, p. 69.

<sup>4</sup> 1908, 209 U. S. 123-204.

<sup>5</sup> 1908, 209 U. S. 205, 211.

<sup>6</sup> A child labor act was advocated at that time by Senator Beveridge and one was passed for the District of Columbia (May 28, 1908, 25 Stat. at L. 420). For a contemporary discussion of the federal Child Labor Bill then pending, and the litigation over the Employers' Liability Act for Carriers (Act of June 11, 1906, 34 Stat. at L. 232), see Pierce, *op. cit.*, 284-291. The Employers' Liability Act was held unconstitutional for failing properly to exclude intrastate commerce from its scope, on January 6, 1908, in *Howard v. Illinois Central R. R. Co.* (207 U. S. 463, 52 L. ed. 297). It was superseded by a more carefully drawn act, that of



Early in the course of the next administration, it was held that the Migratory Bird Act could not be upheld either as an exercise by Congress of the power to regulate commerce or as an attempt to protect the property of the United States.<sup>7</sup> It was beginning to look as if Hamilton had been right after all when he said, "It will always be more easy for the state governments to encroach upon the national authorities than for the national government to encroach upon state authorities."<sup>8</sup> One may surmise—if one is permitted to wander into the realm of hypotheticals—that the subject would hardly have been revived today had it not been for the demonstration of the latent powers of the national government which the war afforded. While it was on, there was a widespread feeling that it was unpatriotic to question the power of the national government in any respect. Under the impetus

April 22, 1908 (35 Stat. at L. 65), amended April 5, 1910 (36 Stat. at L. 291), and upheld in *Mondou v. N. Y., etc. R. R. Co.* (1908, 223 U. S. 1, 56 L. ed. 327). Cf. also *Pederson v. R. R. Co.* (1913, 229 U. S. 146, 57 L. ed. 1125). A Child Labor Act was passed September 1, 1916 (39 Stat. at L. 675), the constitutionality of which was denied in *Hammer v. Dagenbart* (1918, 247 U. S. 251, 62 L. ed. 1101). Cf. Gordon, "The Child Labor Law Case," 32 *Harvard Law Review*, 45. See also note 59.

<sup>7</sup> The Migratory Bird Act (March 4, 1913, 37 Stat. at L. 847) was held unconstitutional in the following cases in the state and federal courts: *United States v. Schauver* (1914, 214 Fed. 154); *United States v. McCullagh* (1915, 221 Fed. 288); *State v. McCullagh* (1915, 96 Kans. 786, 153 Pac. 557); *State v. Sawyer* (1915, 113 Me. 458, 94 Atl. 886). In this instance, the resources of the national government were not exhausted by resort to the theory of interstate commerce or the protection of property of the United States or implied powers of the national government. The treaty-making power was invoked in order to bring about directly what could not be done by legislation. On August 16, 1916, a treaty between the United States and Great Britain on behalf of Canada was made with reference to the subject, and on July 3, 1918 (40 Stat. at L. 755), it was put into effect by a reenactment of the provisions previously held unconstitutional. Under the second act prosecutions were commenced in several states to raise the question whether the President and Senate could thus make possible by treaty what Congress could not otherwise do by legislation. All of the district courts seemed to have agreed that they could. In *State of Missouri v. Holland* (1920, 252 U. S. 415, 64 L. ed. 64), the second act was held constitutional. See the learned note, antedating this decision, in 33 *Harvard Law Review*, 281.

<sup>8</sup> *The Federalist*, No. 17, quoted by Leacock, *op. cit.* The devious ways in which the state may encroach on federal authority are nowhere better illustrated than in Professor Powell's studies on "Indirect Encroachment on Federal Authority by the Taxing Powers of the States," 31 *Harvard Law Review*, 321, 572, 721, 932, and 32 *ibid.*, 234, 374, 634, 902. This study, however, shows also that in the last ten years there has been not only a tendency to check such encroachment by judicial decisions but also a move in the opposite direction.

of that feeling, such a book as Commissioner Henry Lichfield West's *Federal Power, its Growth and Necessity* (1918) is to be explained. The author not only admits the fact of federal usurpation—he glories in it.

The acute stage of national control brought about by war conditions has passed. And yet if a chart could be drawn with a curve in which the accidents of personality and temporary necessity could be averaged, there is no doubt that it would show a great increase of the relative importance in our lives of national control as compared with state control. What is not so apparent is the method by which the national government has proceeded. Most of the discussions have been partisan, to the extent at least that they have either accused the courts of surreptitiously amending the Constitution or else have defended and even praised the courts for their readiness to adapt the Constitution to new conditions.

What has actually been done, however, is by no means the work of the courts alone. The part of the executive in the Roosevelt and Wilson administrations was far more conspicuous than that of the courts. The legislative contribution to its development will be apparent from a mere enumeration of the principal statutes involved: the beginning of the authorization by Congress in 1866 of transcontinental railways,<sup>9</sup> the Interstate Commerce Act of 1887<sup>10</sup> and its amendments,<sup>11</sup> and a host of smaller acts such as the Sherman Anti-Trust Act of 1890,<sup>12</sup> the Lottery Act of 1895,<sup>13</sup> the Safety Appliance Acts of 1893, 1903, and 1910,<sup>14</sup> inspections of grasses, etc., 1904<sup>15</sup> the Employers' Liability Acts

<sup>9</sup> Act of June 15, 1866 (14 Stat. at L. 66). The act was "to facilitate commercial, postal and military communication among the several states." This act, which represents the first attempt of the government to grant charters for railroads in states without their consent was upheld even as to roads within a state, in *California v. Pacific R. R. Co.* (1888, 127 U. S. 1, 32 L. ed. 150).

<sup>10</sup> Act of February 4, 1887 (24 Stat. at L. 379).

<sup>11</sup> Act of March 2, 1889 (25 Stat. at L. 855); act of February 10, 1891 (26 Stat. at L. 743); act of February 19, 1903 (32 Stat. at L. 847); June 29, 1906 (34 Stat. at L. 584); June 18, 1910 (36 Stat. at L. 539); May 29, 1917 (40 Stat. at L. 101); August 10, 1917 (40 Stat. at L. 272); February 28, 1920 (41 Stat. at L. 456, 474).

<sup>12</sup> Act of July 2, 1890 (26 Stat. at L. 209).

<sup>13</sup> Act of March 2, 1895 (28 Stat. at L. 963). See also notes 45 and 46 below.

<sup>14</sup> Acts of March 2, 1893 (27 Stat. at L. 531); March 2, 1903 (32 Stat. at L. 943); April 14, 1910 (36 Stat. at L. 298).

<sup>15</sup> Act of April 28, 1904 (33 Stat. at L. 283).

of 1906, 1908 and 1910,<sup>16</sup> the Hallmark Act of 1905 and 1906,<sup>17</sup> the Commodities Clause<sup>18</sup> and the Pure Food and Drugs Act<sup>19</sup> of the same year, standards for grades of cotton, inspection of seed grains, etc., 1908,<sup>20</sup> the Meat Inspection Act of 1907,<sup>21</sup> the White Slavery Act of 1910,<sup>22</sup> the act as to arbitration of carriers labor disputes of 1913,<sup>23</sup> the Migratory Bird Acts of 1913<sup>24</sup> and 1918, the various package marking acts,<sup>25</sup> the Federal Reserve Act<sup>26</sup> and the Webb-Kenyon Liquor Act<sup>27</sup> of the same year, the Federal Trade Act<sup>28</sup> and Anti-trust Act of 1914,<sup>29</sup> the Farm Loan Act of 1916,<sup>30</sup> the Child Labor Act of 1916,<sup>31</sup> the Eight-hour Railroad Act of 1916.<sup>32</sup>

By no means every attempt of Congress has been upheld by the Supreme Court. Nor has that court acted uniformly in the direction of extending national power. It declared, for example, in 1869 that insurance was not commerce,<sup>33</sup> and having sworn to its hurt, it changed not.<sup>34</sup> Its definition of commerce, while very comprehensive in some respects, is after all surprisingly limited. The famous sentence in

<sup>16</sup> Act of June 11, 1906 (34 Stat. at L. 232); April 22, 1908 (35 Stat. at L. 65); April 5, 1910 (36 Stat. at L. 291). Cf. note 6, above.

<sup>17</sup> Act of February 21, 1905 (33 Stat. at L. 732); June 13, 1906 (34 Stat. at L. 260).

<sup>18</sup> Act of June 29, 1906 (34 Stat. at L. 584).

<sup>19</sup> Act of June 30, 1906 (34 Stat. at L. 768).

<sup>20</sup> Act of May 23, 1908 (35 Stat. at L. 256).

<sup>21</sup> Act of March 4, 1907 (34 Stat. at L. 1256). Earlier acts touching on the subject had been passed in 1890, 1891, 1903, 1905, and 1906.

<sup>22</sup> Acts of March 26, 1910 (36 Stat. at L. 263); June 25, 1910 (36 Stat. at L. 825).

<sup>23</sup> Act of July 15, 1913 (38 Stat. at L. 103).

<sup>24</sup> See note 7, above.

<sup>25</sup> Acts of August 3, 1912 (37 Stat. at L. 251), as to branding of apple barrels; March 4, 1904 (35 Stat. at L. 1137), as to intoxicating liquor; August 23, 1916 (39 Stat. at L. 530), as to barrels of lime; August 20, 1912 (37 Stat. at L. 316); as to conspicuous branding of horse meat, Act of July 24, 1919 (41 Stat. at L. 234, 241).

<sup>26</sup> Act of December 23, 1913 (38 Stat. at L. 251).

<sup>27</sup> Act of March 1, 1913 (37 Stat. at L. 699).

<sup>28</sup> Act of September 26, 1914 (38 Stat. at L. 717).

<sup>29</sup> Act of October 15, 1914 (38 Stat. at L. 730).

<sup>30</sup> Act of July 17, 1916 (39 Stat. at L. 360).

<sup>31</sup> Act of September 1, 1916 (39 Stat. at L. 675). Cf. note 6, above.

<sup>32</sup> Act of September 3, 5, 1916 (39 Stat. at L. 721).

<sup>33</sup> *Paul v. Virginia* (1869, 8 Wall. 168, 19 L. ed. 357).

<sup>34</sup> *N. Y. Life Insurance Co. v. Cravens* (1900, 178 U. S. 389, 44 L. ed. 1116); *N. Y. Life Insurance Co. v. Deer Lodge Co.* (1913, 231 U. S. 495, 58 L. ed. 232). Cf. Cooke, *The Commerce Clause of the Federal Constitution*, secs. 7-9.

Gibbons v. Ogden,<sup>35</sup> "Commerce undoubtedly is traffic, but it is something more: it is intercourse," was big enough to include the railroad,<sup>36</sup> the telegraph,<sup>37</sup> and the telephone<sup>38</sup> in their turn. But it has somehow or other carried with it the suggestion that commerce does not include anything but intercourse. It has been denied, for example, that a grain elevator engaged in the business of storing grain in the course of interstate transportation is engaged in interstate commerce,<sup>39</sup> and manufacturing and commerce have been emphatically distinguished. In Kidd v. Peterson,<sup>40</sup> Mr. Justice Lamar says that manufacturing is the transformation or the fashioning of raw materials into a changed form for use. In the case of the United States v. Knight, it was said:

"If it be held that the term [commerce] includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it will also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the states with the power to regulate not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries and mining;

<sup>35</sup> 1824, 9 Wheat 1, 229, 6 L. ed. 23.

<sup>36</sup> Consistently since the legislation of 1866, mentioned in note 9, above.

<sup>37</sup> The Ohio supreme court once held that the sending of telegraph messages was not commerce, *Western Union Tel. Co. v. Mayer* (1876, 28 Ohio St. 521). This decision has been completely overwhelmed, however, by the almost uniform holding of almost every other jurisdiction. Cf. *W. U. Tel. Co. v. State Board of Assessment* (1889, 132 U. S. 472, 33 L. ed. 409).

<sup>38</sup> Act of June 29, 1906 (34 Stat. at L. 584), added to the jurisdiction of the Interstate Commerce Commission telegraph, telephone and cable companies (whether wire or wireless) engaged in sending messages from one state, territory, or district to another.

<sup>39</sup> *Cargill Co. v. Minnesota* (1901, 180 U. S. 452, 45 L. ed. 619). The production of plays has been held not to be commerce under the New York penal code, *People v. Klaw* (1907, 106 N. Y. Sup. Ct. Rep. 341, 350, 55 Misc. Rep. 72). The baseball industry is not interstate commerce. Cf. 34 *Harvard Law Review*, 559; 16 *Michigan Law Review*, 867; *The National League et al. v. The Federal Baseball Club of Baltimore, Inc.* (48 Wash. L. Rep. 819); *American Baseball Club of Chicago v. Chase* (86 Misc. Rep. 441, 149 N. Y. Sup. Ct. Rep. 6). Nor is the presentation of grand opera by a company on tour interstate commerce, *Metropolitan Opera Co. v. Hammerstein* (1914, 162 App. Div. 691, 147 N. Y. Sup. Ct. Rep. 542). Nor is a personal service contract between citizens of different states interstate commerce, *Williams v. Fears* (1900, 179 U. S. 270, 45 L. ed. 186). Service rendered by a mercantile agency is not commerce, *State v. Morgan* (1891, 2 S. D. 32, 48 N. W. 314, [writ of error dismissed, 1894], 159 U. S. 261, 40 L. ed. 145).

<sup>40</sup> 1888, 128 U. S. 1.

in short, every branch of human industry. The business of refining sugar is a manufacture, and not an operation of commerce, and therefore not within the commerce clause of the Federal Constitution."<sup>41</sup>

The theory is simple enough. Yet when the Supreme Court was faced with the practical question of determining which initiatory processes connected with selling and transporting were commercial in their nature and which of a manufacturing type, their inaccurate economic definitions of these economic terms caused them endless trouble. The solicitation of a drummer was held to be commerce.<sup>42</sup> The business of conducting a correspondence school is interstate commerce,<sup>43</sup> as is that of selling natural gas after its severance from the ground,<sup>44</sup> and the transmission of lottery tickets.<sup>45</sup> Indeed it would seem that not only the transmission but also the issuing of lottery tickets was within national control.<sup>46</sup> This leads to the narrow question—not entirely unrelated to the control of patents and copyrights—whether the misbranding of goods within a state may be made a national offense? It was so held, in *United States v. Chas. L. Heinle Specialty Co.*,<sup>47</sup> and the Marking of Packages Act of March 3, 1913, carries this theory further. The commodities clause of 1906 as construed in *United States v. D. & H. Railway Co.*<sup>48</sup> goes far towards establishing the doctrine that the conditions under which a thing is produced may be controlled by means of the national power to exclude articles produced in the prohibited manner from interstate transportation.

Finally, the Anti-Trust Act of 1914 affects industry directly as well as indirectly in that it speaks of the unlawfulness of the condition that the purchaser or hirer of one's goods or wares shall not use the goods of a competitor.<sup>49</sup> Such industries as the boot and shoe manufacturing

<sup>41</sup> 1895, 156 U. S. 1.

<sup>42</sup> *Brennan v. City of Titusville* (1893, 153 U. S. 289, 38 L. ed. 119).

<sup>43</sup> *International Textbook Co. v. Pigg* (1902, 217 U. S. 91, 54 L. ed. 678).

<sup>44</sup> *Haskell v. Gas Co.* (1911, 224 U. S. 217, 56 L. ed. 738).

<sup>45</sup> *Champion v. Ames* (1903, 188 U. S. 321, 47 L. ed. 492).

<sup>46</sup> In the lottery case, cited above, Mr. Justice Harlan says: "May not Congress, for the protection of the people of all the states, and under the power to regulate interstate commerce, devise such means, within the scope of the Constitution, and not prohibited by it as to drive that traffic out of commerce among the states?"

<sup>47</sup> 1910, 175 Fed. 299.

<sup>48</sup> 1908, 213 U. S. 366, 53 L. ed. 836.

<sup>49</sup> Section 3 makes it unlawful for any person engaged in commerce, in the course of such commerce to lease or make and sell, or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities whether patented

business which have heretofore been supplied with machinery on exactly that basis are particularly affected. And the Federal Trade Commission Act of the same year gives such broad powers to the commission, that it is not easy to say where the line will be drawn between what the Supreme Court calls commerce and what it prefers to call manufacture.<sup>50</sup>

These illustrations of national control over industry are limited to the operation of statutes under the interstate commerce clause. The power of making or unmaking a business under the postal authority through fraud orders,<sup>51</sup> the power of fostering or even creating new industries or of destroying old ones through the imposition of tariffs, the extension of the jurisdiction of United States courts by keeping the Bankruptcy Act alive,<sup>52</sup> and the chance of abusing national powers are beyond the scope of this study. An extreme example may, however, be mentioned. When Congress (in 1913), had determined to interfere in the Paint Creek disturbances in West Virginia, it sent a committee to investigate whether there had been any violation of the immigration laws or other national laws involved in the causes of the disturbance. The same method was resorted to in connection with purely local disturbances in the mines of Michigan and Colorado. The presumption, apparently, is that any community would rather make

or unpatented. . . . on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, etc. of a competitor.

<sup>50</sup> In section 4 the word "commerce" as used in the act is defined as follows: "Commerce means commerce among the several states or with foreign nations or in any territory of the United States." In section 5, "unfair methods of competition in commerce are hereby declared unlawful. The commission is hereby empowered and directed to prevent persons, partnerships or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce." In other words, commerce is distinctly understood as embracing something more than the transportation that had hitherto been emphasized as the chief, if not the only, element of interstate commerce.

<sup>51</sup> Based on Revised Statutes 3929 as amended, Act of September 19, 1890, ch. 908, sec. 2, and Revised Statutes 4041 as amended, Act of September 19, 1890, ch. 908, sec. 3.

<sup>52</sup> The earlier bankruptcy acts were all ostensibly passed for emergencies, and accordingly repealed within a few years after their passage. This was undoubtedly the feeling of most people with reference to the Bankruptcy Act of July 1, 1898. Instead of being repealed, however, it is still on the books (amended February 5, 1903, June 15, 1906, June 25, 1910, March 2, 1917), and from present indications is likely to remain a permanent part of the jurisdiction of federal courts.

peace at any price than submit to the visitation of a congressional committee, or possibly there lurks behind this method the notion that if necessary an army can be sent into the state where the investigation is being carried on in order to protect the congressional committee in its function of investigating.

The real basis for the extension of national power over industry is the simple fact that the greatly increased facility of communication has made a business unit of the country. It is indeed open to question whether nationalization of power has gone or can go under our present Constitution as far as the actual nationalization of industry has gone. There are physical facts which the law *haurd passibus aquis* attempts to follow. It is not so surprising to see chalk marks erased as it is to learn that the lines are mere chalk.

This consideration brings us to the second lesson of legal history. To what extent are the efforts of the national legislature, courts and executive authorities capable of being illuminated by reference to comparative legal history? The closest analogy seems to be furnished by the period when the Norman and Angevin kings of England were developing a national law and national courts to take the place of the innumerable local jurisdictions into which England had theretofore been divided. The entering wedge for this national jurisdiction was in those days the power of the king over the highway, as it is with us the power of the nation over the railway. The whole history of those times remains obscure until we realize that the king was not the fountain-head of justice, but that the local jurisdictions were to all intents and purposes states as independent of the central jurisdiction of the king's courts as our state courts are in theory independent of our national jurisdictions today.

Of the efficiency of these royal courts in arrogating to themselves all jurisdictions there can be little doubt. The local jurisdictions gradually sank into oblivion, and one after the other they disappeared. The subject matter that they had handled was dealt with by the king's courts or church courts or entirely neglected. It was many years before the expression "no wrong without a remedy" had even a presumptive force in the king's court, for there was always the possibility that a remedy existed in some other court.

What were the methods by which the king took the jurisdiction of the local courts? Many of the discussions of this part of English legal history are hazed over and obscured by the completeness of the victory of the king's courts. They suggest that the powerful Norman

kings deliberately and openly introduced substitute actions of their own to take the place of causes of action normally entertained by local courts. As a matter of fact, the Norman kings were too cautious, their advisers too wise, and their position too insecure to permit of any such procedure. Besides, it must be remembered that legislation in the modern sense was unknown. That the Norman kings did not purport to introduce new laws is illustrated time and again by the use of the pious fraud of reintroducing the laws of King Edward the Confessor.<sup>43</sup> The most high-handed act of the Conqueror himself consisted of his tabulation of the rights which he in theory possessed as the legitimate successor of Edward on the throne.<sup>44</sup> And all of these rights he tabulated on the theory that land-holding was to continue and revenues to go on in accordance with the laws of the Saxons. When his right-hand man, Lanfranc, clashed with his half-brother Odo over the possession of certain lands, they had to call in old Bishop Athelric, an Englishman, to determine their claims in accordance with the laws of the land.<sup>45</sup> This old man whom, the chronicler tells us, they brought in on a wagon, is the very embodiment of the continuity of Anglo-Saxon laws under the conquerors. The very forgeries of this period are a tribute to the theory that the old law continued.<sup>46</sup> Otherwise, why speak in the name of Edward the Confessor?

<sup>43</sup> Thus in his charter to the Portgerefæ and the citizens of London, William the Conqueror wills "that ye be worthy of all the laws that ye were worthy of in King Edward's day." (*Liber Custumarum*, pt. 1, pp. 25, 26. Text and translation in Stubbs' *Select Charters*.) The charter of liberties of Henry I, of the year 1100, recites: "The law of King Edward I give to you again with those changes with which my father changed it by the counsel of his barons." (Text in Stubbs' *Select Charters*.) Stephen's charter of 1135 recites: "All the good laws and good customs which they had in the time of King Edward I concede to them." (Translated in 1 *Translations and Reprints* 6, p. 5, from 1 *Statutes of the Realm* 4.)

<sup>44</sup> "So very narrowly," the Anglo-Saxon Chronicle tells us, "did he cause the survey to be made that there was not a single hide nor a rood of land nor—it is shameful to relate that which he thought no shame to do—was there an ox, or a cow, or a pig passed by, that was not set down on the accounts, and then all these writings were brought to him."

<sup>45</sup> The case of Lanfranc v. Odo is translated in *Essays in Anglo-Saxon Law*, p. 369.

<sup>46</sup> The great forgery which professes to be the laws of Edward the Confessor begins as follows: "Here begins the law of the glorious king of the English, Edward. Four years after the conquest of this country, England, by King William, with the counsel of his barons, he caused to be summoned throughout all the counties of the land the English nobles, the wise and those learned in their own law, to hear their customs from their own lips. Thereupon from each and



Under these conditions there was theoretically but little for the king's court to do beyond the protection of the king's peace and the settlement of disputes in which the king was personally interested. Now the king's peace, it must be remembered, was not the only peace to be protected in England. There was the church peace, the house peace, the folk peace. To violate any of these was not necessarily to bring one under the jurisdiction of the king's court. The story has often been told of how the king's peace, beginning with the protection of the king's person and the prevention of disturbance in the king's presence or in his house, came to be extended to the king's servants in all places and eventually to persons specially taken under the king's protection and made his servants *pro tanto*.<sup>57</sup> Whole classes of persons came to be included. Before long great roads, the king's highways, and eventually all highways, came to be looked upon as directly involving the king's peace, and so gradually its force was felt throughout the country. It remained only for the king on his coronation as an act of grace to take all persons in England into his care, and thus establish the foundation of public prosecution for crimes in the king's courts for various private prosecutions in various courts. But the value of the king's peace as an entering wedge was not limited to criminal procedure. By alleging that the most ordinary trespass had been committed *contra pacem regis, vi et armis*, it became possible to bring any case before the king's justices. Other fictions, notably that of the king's debtor, by which the king's exchequer became a court for the trial of claims between man and man, gradually made possible the transfer of innumerable cases to the centralized courts.

With centralized courts there came a centralized law. In the days of Henry II there were various customs in England. In the days of Henry III it was possible to speak of the general custom of England, subject to slight local deviations.<sup>58</sup> To imagine that this transfer was

every county in the land twelve chosen men promised under oath that to the best of their ability they would set forth their laws and customs, omitting nothing, adding nothing, changing nothing."

<sup>57</sup> Cf. Inderwick, *The King's Peace*, Pollock, *Oxford Lectures*, "The King's Peace;" Howard, *On the Development of the King's Peace and the English Local Peace Magistracy*.

<sup>58</sup> Cf. 1 Pollock and Maitland, p. 163, on the decline of local customs in England. Gradually there develops a presumption that there is no local custom contrary to the general custom of England unless it is specially approved. The discussion ends with this significant statement: "No English county ever rebels for the maintenance of its customary law."

accomplished without vigorous controversies of the nature of states rights claims is to misread the entire history of the thirteenth century. The controversies between the barons and the king are very largely controversies as to jurisdiction. So long as feudalism remained a factor in the lives of the people, the royal courts had rivals. It was not that the victory of the royal courts destroyed the feudal units. On the contrary, the feudal jurisdictions outlasted feudalism at least on paper. But as life in England became national, national jurisdiction had to expand to take care of it. It was not a question of the rights of localities, but of the duties of the nation.

And so it is with us. State lines are not so clear in life as they used to be. I do not prophesy their disappearance. But so far as they fail to correspond to actualities, we may depend upon the "law in action" to deviate from the law of the books so as to meet the practical needs of business. If eventually the law books come to record what has happened in life, it is misleading to brand the resulting federalization as federal usurpation. If anything is to be criticized or regretted in this connection, is it law or is it life?<sup>99</sup>

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**Federal Aid to the States.** When a central authority orders a local subordinate government to take a certain course of action under penalty, it is more than likely that the enforcement of the order will lead to difficulties, and it may even result in open defiance on the part of the local government. The effect is very different, however, when the central authority merely establishes a standard and promises to turn over cold cash to the local units which meet the standard. With governmental units as with individuals, rewards for work properly done are more likely to produce desirable results than punishment for failure to obey orders. It is in recognition of this principle that so many of the states have adopted the subsidy or state aid system in education

<sup>99</sup> Since this paper was read at the meeting of the American Political Science Association in December, 1921, several important decisions have been handed down by the Supreme Court of the United States: two illustrate the firmness of the hold of the national power on railroads as the result of a long tradition [Railroad Commission of Wisconsin v. C. B. and Q. Ry. (1922) 42 Sup. Ct. 232 and State of New York v. U. S. (1922) 42 Sup. Ct. 239]; and the other the comparative weakness of the national power in connection with new fields of social legislation [Bailey v. Drexel Furniture Co. (1922) U. S. Sup. Ct. Oct. Term, 1921, No. 657 on the unconstitutionality of regulating child labor through federal taxation.]

and have more recently established the same practice in road building. In Switzerland, where opposition to complete central control over education has been strong, the subsidy system has increased federal influence without taking the control out of the hands of the cantonal authorities. The British home secretary is given supervision over borough and county police by means of a subsidy. The local government has been reimbursed by the exchequer to the extent of one-half of the total cost of maintaining its police system whenever the home secretary certifies that certain standards have been met. Up to 1919 the contribution of the central government was limited to one-half of the cost of pay, including pensions, and clothing, but the present arrangement provides for the payment from the exchequer of one-half of all costs.<sup>1</sup>

It does not necessarily follow, however, that all subsidies are the result of conscientious endeavors on the part of the central government to secure efficient local administration through the diplomatic use of rewards. The opponents of national aid in the United States point out that the subsidy may be prompted by a desire to encroach unduly upon states rights, that it is sometimes used by politicians as a mantle to cover the sins of the extravagant appropriation of national funds for local purposes, and that the states are sometimes made to feel that the subsidy is a gift from the national treasury when, as a matter of fact, it means merely taking money out of one pocket and putting it into another.

Twelve acts providing for national aid to the states in some form or another are today on the statute books. These acts may be divided into three groups: (1) The laws enacted from 1862 to 1906, giving aid to the states with comparatively few conditions; (2) the recent acts which provide for the return to the state by the national government of a portion of the income from leases, royalties, etc., accruing from natural resources owned by the national government and located within the state; (3) the acts from 1914 to date, providing for conditional subsidies and placing a large amount of supervisory power in the national agencies.

In the first group belong the following: the Morrill Land Grant Act, July 2, 1862; Additional Aid Act, August 30, 1890; Adams Act, March 16, 1906, supplementing and amending the Hatch Act of March 2, 1887. The following are in the second group: the National Forest Fund Act, March 4, 1907; as amended May 23, 1908, March 1, 1911,

<sup>1</sup> *Report of the Committee on the Police Service of England, Wales and Scotland* (London, 1920).

and June 30, 1914; the Oil Leasing Act, February 25, 1920; the Federal Water Power Act, June 10, 1920.

Acts providing for subsidies with detailed conditions are: the Smith-Lever Act, May 8, 1914; the Federal Aid for Roads Act, July 11, 1916, as amended November 9, 1921; the Smith-Hughes Act, February 23, 1917; the Industrial Rehabilitation Act, June 2, 1920; the Chamberlain-Kahn Act, July 9, 1918; the Sheppard-Towner Act, November 23, 1921.

The three acts in the first group were enacted for the purpose of encouraging agriculture and mechanical education. In the Morrill Act, which was the first law to grant national aid to the states, certain lands were set aside for the use of agricultural and mechanical colleges. The additional act passed twenty-eight years later provided for the annual payment of \$25,000 to each state for the purposes set forth in the original act. The annual payment was later changed to \$50,000.

These grants are comparatively free from conditions, and yet there are certain fundamental principles, such as the requirement of military training and the equal treatment of races, which the states are required to follow in order to receive the funds. The Adams Act gives \$30,000 to each state for the use of agricultural experiment stations. Here too the conditions imposed are easily met, and the national agency has but little power compared with that enjoyed under the acts of the third type, which will be described presently.

As already indicated, the laws of the second type provide for unconditional grants to the states. Under the National Forest Fund Act, 25 per cent of the proceeds from forest reserves are turned over to the state in which the reserve is located to be spent for schools and roads under the direction of the state legislature. Over a million dollars was turned back to the states under this law during the first year ending June 30, 1921. The Oil Leasing Act returns 37½ per cent of bonuses and royalties from oil wells on public lands to the states. The director of the budget estimated that the amount returned during the last fiscal year would total one and one-half million dollars. As in the case of the forest funds, the state legislature has charge of the expenditure which must be for roads and education. The Water Power Act returns to the several states 37½ per cent of the proceeds from licenses for the use of water power on national lands. None of these acts conditions the payments to the state, outside of the proviso that the money received shall be expended for schools and roads. Neither is there any attempt on the part of the national government to supervise the details of expenditure.

It is the third type of national aid that is particularly interesting to the student of government. The six acts of this group, while turning national money into the state treasury, impose conditions upon the states, the fulfillment of which is passed upon by national officials.

*The Smith-Lever Act.* This law not only inaugurated the idea of close coördination of national and state agencies but also established the "fifty-fifty" practice (duplication by state of national funds). Its purpose is to encourage instruction and practical demonstration in agriculture and home economics to persons not attending college.

The original act appropriated \$1,080,000 to be allotted to the various states, with the proviso that the appropriation should be increased from year to year. In addition to the continuing appropriations provided for in the law, a special appropriation was made in 1919 which has brought the total appropriation for the fiscal year 1921-22 up to \$5,580,000. This sum is apportioned among the states in the following manner: \$480,000 is divided equally, \$10,000 to each state; while the remainder is allotted to the several states according to rural population. In order to secure its allotment a state must duplicate all moneys received above \$10,000. The duplication need not be from the state treasury, as all contributions from county or local authorities, from colleges, and from private individuals are credited to the state. In 1919-20, 67 per cent of the duplication came from state treasuries, 28 per cent from counties and the remaining 5 per cent from colleges and local governments.

But the state cannot fulfill the requirements of the law merely by duplicating the allotment of national money. All work done under the law is subject to the supervision of the department of agriculture and all plans and methods must be approved by the national government. In fact, all or any part of an annual allotment may be withheld from the state by the secretary of agriculture who, through the states relations service, administers the act. The land grant colleges are made the state coöperating agencies, the state legislature designating what college is to act in states that have more than one land-grant college. This arrangement means that the secretary of agriculture can, in effect, give orders that must be obeyed by a land-grant college operated almost entirely at the expense of the state. The college is naturally desirous of receiving the allotment and hesitates about taking any action which will call forth the disapproval of the national agency.

About 50 per cent of the amount spent under the Smith-Lever Act is for county agricultural agents, about 20 per cent for demonstrations

in the field of home economics, and the remainder for agricultural specialists, boys' and girls' clubs, and publications. The beneficent effect of the law has been felt in the agricultural communities of every state in the Union, although some of the land-grant colleges are complaining, perhaps with some justification, that the hand of the national department is resting too heavily upon them.<sup>2</sup>

*Federal Aid For Roads Act.* This act followed the Smith-Lever Act by two years and was a further application of the dual principle of extending national control through state agencies, combined with the "fifty-fifty" scheme of appropriations. As the name indicates, the purpose of this law is to aid the states in the construction (but not the maintenance) of rural highways. Here again the secretary of agriculture administers the act, but this time through the bureau of public roads. The state highway department is made the state coöperating agency. All plans and projects for road building must be submitted to the national officials for approval. The national government, represented by the secretary of agriculture, has power to withhold all or any part of a state allotment in case the plans or projects are disapproved, or in case the regulations of the department are disregarded in the state road-building program. An interesting provision is that which gives the secretary of agriculture power to withhold all aid in case the state fails properly to maintain roads already built under the law.

This act carries a larger appropriation than all the other acts put together. \$75,000,000 was appropriated for the fiscal year 1921-22, and the report of the director of the budget makes provision for \$125, 000,000 for the year ending June 30, 1923.

The money is apportioned to the states in the following manner: The fund is divided into three equal parts. One part is apportioned according to population, one according to area, and one according to mileage of rural and star mail routes. Under this arrangement Texas receives the largest apportionment, with New York second, Pennsylvania third and Illinois fourth. No state is to receive less than one-half of one per cent of the total, and this stipulation increases the amount available to Delaware, New Hampshire, Rhode Island and Vermont.

The state must meet the national appropriation dollar for dollar. This appropriation need not necessarily come from the state treasury, as local government appropriations may be credited to the state. An

<sup>2</sup> *The Relations of the Federal Government to Education.* University of Illinois Bulletin, Dec. 28, 1921.

exception to the "fifty-fifty" scheme is made in states where more than 5 per cent of the area of the state is made up of unappropriated lands. In such states the federal government may contribute to the extent of 50 per cent plus one-half of the percentage of the area of the state which is included in public lands. Under this rule ten western states may receive more than half the cost of road construction from the national treasury. Thus Utah may receive 75 per cent of the construction costs, while Nevada may charge as high as 87 per cent of her road construction costs to the national government. Outside of these ten states, where the limit varies, the contribution of the central government is limited to \$20,000 per mile.

The national appropriation and the state funds matching it must be expended on a connected road system not to exceed seven per cent of the total mileage of highways in the state. There are other regulations, as to the amount to be spent on trunk highways, width of roadbed, etc., and all of these regulations may be enforced by the national government on penalty of losing national aid.

There seems to be little complaint of "federal interference" from the state highway departments. A questionnaire sent by the writer to the forty-eight state highway departments brought back an almost unanimous verdict of satisfaction with the present system of national aid for roads.

Only two of the thirty-six departments reporting failed to state that the situation in their respective states had been benefited materially by national aid, and in many instances the state officials were loud in their praises of the system. The objection to national aid which is voiced by many of the land-grant colleges does not seem to be shared by the coöperating agencies under the roads act.

Prior to 1917 the national government took no active part in road building. Now fully half the roads under construction receive national aid. In October, 1921 there were 27,000 miles of road completed or under construction.

*The Smith-Hughes Act.* The purpose of this act is to aid the states in the promotion of vocational education. There are three separate and distinct appropriations under this act. The first is to be used for salaries of educators in agriculture, and varies in amount from \$500,000 in 1918 to \$3,000,000 in 1926 and thereafter. This fund is allotted to the several states on the basis of rural population. The second appropriation is for salaries of educators in the field of trade and industry, including home economics. The amounts under this head coincide

with the appropriation under the first head. The moneys under this head are allotted to the states on the basis of urban population, and not more than 20 per cent of the total can be used for teachers in home economics. This section of the law is criticised by those interested in the development of home economics because of the 20 per cent limit. Objection is also made to the 'basis of allotment, as the need for instruction' in home economics is in proportion to total population rather than to urban population, which is the basis mentioned in the law. The third set of appropriations is for the training of teachers in the field of vocational education, and the amounts vary from \$500,000 in 1918 to \$1,000,000 in 1926 and thereafter. This fund is apportioned to the states on the basis of total population. The state directly, or through local government appropriations, is required to duplicate all national moneys, and both state and national funds must be spent for salaries only, except in connection with teacher training where money may be expended for buildings and grounds and other necessary expenses as well as for salaries. The state may accept one or more of these funds, but the teacher training fund must be accepted in order to get other funds in the same field. The funds must be used for the benefit of persons over fourteen years of age, and the work done must be below college grade.

The Smith-Hughes Law is administered by the federal board of vocational education, which, consists of the secretary of agriculture, the secretary of labor, the commissioner of education and three members appointed by the President and the Senate. The state must establish a board of not less than three members, which may be regularly established board of education, to act as the state agency to coöperate with the federal board.

The state board must submit detailed plans for carrying out its program of vocational education. This plan must be approved by the federal board, which is given great advisory power and has arbitrary and plenary power to withhold the subsidy. There seems to be very little objection to "federal interference" on the part of the state authorities. Questionnaires submitted to the superintendents of public instruction in the several states indicated that an overwhelming majority of these officers are well pleased with the law and its administration.

*The Industrial Rehabilitation Act.* This act, which aims to coöperate with the states in the rehabilitation of persons disabled in industry,



should not be confused with the so-called vocational rehabilitation act which provides for the training of ex-soldiers. The latter law is administered directly by the national government while the former is carried out by the states under the supervision of the national authorities. The federal board of vocational education, which is charged with administering this act, was up to a short time ago also in charge of the soldier rehabilitation. At present this board has charge of the Smith-Hughes Law as well as civilian rehabilitation. The administration of soldiers' rehabilitation has been turned over to the newly created veterans' bureau.

The state board provided for in the Smith-Hughes Law is made the state coöperating agency by the industrial rehabilitation act. As far as agencies are concerned this act is merely a supplement to the Smith-Hughes Act. In other respects, too, it resembles the latter measure. The federal board is given powers of supervision and may withhold national aid. The national appropriation, which is approximately \$1,000,000 annually, is apportioned to the states according to population, and the state to receive the aid must not only obtain the approval of the federal board but must, as is the case in the Smith-Hughes Law, duplicate all national moneys directly or indirectly.

Any one who by reason of physical defect, due to any cause, is incapacitated for work may receive training through this fund. No national money, however, must be expended for buildings and grounds. A plan showing details of administration, courses of study, methods, qualifications of teachers, etc., must be submitted annually by the state authorities to the federal board. Unless this plan is approved no national aid can be received.

*Chamberlain-Kahn Act.* The purpose of this act is to coöperate with the states in fighting venereal disease. The work under this act has practically been discontinued during the year 1921-22 because of lack of funds. The director of the budget recommended an appropriation of \$500,000 for the year ending June 30, 1923, and it would be improper to consider the law a dead letter. The inter-departmental social hygiene board, consisting of the secretaries of war, the navy, the treasury and their representatives, is designated as the national agency, and the state board of health is made the state coöperating agency. This board has advisory powers and may withhold aid. The act provides for the apportionment of funds among the states according to population, with the usual proviso that the states must duplicate national moneys. Duplication by the state was not required for

the year ending June 30, 1919, but since that time the states have been required to match the national expenditures with state moneys.

*The Sheppard-Towner Act.* This act, commonly known as the Maternity Bill, aims to cooperate with the states "in the promotion of the welfare and hygiene of maternity and infants." This, the most recent of the acts extending national control through subsidies, was enacted in the closing days of the special session of the present Congress. It is too early to state its effect but it is already looked upon with favor by state officials. Less than a month after its final passage the states began to accept its provisions and to apply for a share in the appropriations. The act appropriates two funds: (1) \$480,000 for the fiscal year 1921-22, to be divided equally among the states. For the following year and for four years thereafter, \$240,000 is annually appropriated for equal distribution. The state need not duplicate this fund but its officials must submit to national supervision in order to obtain its equal share. (2) An additional appropriation of \$1,000,000 annually for the next five years is to be apportioned to the states on the basis of population, after each state is allowed \$5,000 regardless of population. The national moneys from this fund must be duplicated by the states by direct appropriation. The children's bureau of the department of labor is charged with administering the law, and the child welfare division of the state board of health is named as the state cooperating agency. The state board must submit detailed plans to the national bureau which enjoys great supervisory power and has authority to withhold aid. A unique feature is the provision which allows the state to appeal to the President of the United States from the decision of the chief of the children's bureau in case aid is withheld. The law creates the board of maternity and infant hygiene made up of the chief of the children's bureau, the surgeon general of the public health service and the commissioner of education. This board has very few duties outside of approving certain acts of the children's bureau.

*Proposed Measures.* Two bills now before Congress may be mentioned in connection with this discussion: (1) the so-called Americanization Bill introduced by Senator Kenyon, and (2) the Towner-Sterling Bill which provides for the establishment of a department of education.

The Kenyon Bill appropriates \$5,000,000 the first year, and \$12,500,000 annually thereafter, to be apportioned among the states according to the number of illiterates and non-English speaking persons over sixteen years of age in each state. The secretary of the interior through

the bureau of education is given wide supervisory powers and the power to withhold aid. Following the example set by the acts described above, the bill requires duplication, directly or indirectly, of all national moneys.

The Towner-Sterling Bill is a far-reaching measure. It provides for an annual appropriation of \$100,000,000. This appropriation is divided into five parts each with a different purpose and each apportioned among the states in a peculiar way. In order to receive its allotment a state must duplicate from state or local treasuries all funds received from the national government. The secretary of education, proposed under the bill, is to be given only supervisory powers. While the bill goes farther in the matter of appropriations, and is wider in scope than any subsidy act now on the statute books, it gives less power to the national agency than any other subsidy measure. The secretary of education is given only advisory powers, and in case a state fails to comply with the law his only recourse is to report the matter to Congress. National aid cannot be withheld from any state which makes the annual report.

The measure is opposed by a very active group of educators who feel that even though the measure does not give plenary power to the national government, it is nevertheless a step in the direction of extreme centralization in education. Up to the present, however, a majority of educators seem to favor the bill.

The resemblances among the six acts establishing conditional subsidies are striking. Each one provides for close cooperation between the federal government and the state and gives the federal officers great powers over the cooperating state agency. In every case the statutes virtually declare certain state officials to be agents of the national government to the extent that their relationship with national officials is defined and established. In no case is the state under any compulsion to accept the law and the relationship is entered upon voluntarily. The requirement that the state must match the national appropriations from state or local treasuries is common to all the acts.

The cardinal principle of these acts seems to include two items: (1) A willingness on the part of the state to permit its officials to be advised if not actually commanded from Washington, in exchange for the payment by the national government of one-half of the expenses of activities that have been usually looked upon as belonging primarily to the state; (2) A willingness on the part of the national government to pay one-half of the expenses of these activities on condition that the state submits to a certain amount of national direction.

It is very clear that the inauguration of the conditional subsidy system greatly increases the power of the central government and permits an encroachment upon the states which would clearly be unconstitutional if brought about by mandatory legislation. If the national government should order a state to build roads in a certain way, if, for example, the secretary of agriculture should issue an order to a state highway department, the enforcement of such an order would be flagrantly in violation of the constitution. Yet the secretary of agriculture may suggest to a state engineer that in case certain orders relating to road construction are not followed to the letter the national aid will be withheld, and there is little likelihood that the state official will refuse to follow the suggestion. To contend that the children's bureau in Washington can issue orders relative to maternity hygiene which the state board of health in Ohio will feel obliged to obey, or that a national educational board can dictate policies in the field of vocational education to a state board of education in Pennsylvania, would no doubt seem like contempt for the sovereignty of the states, and yet under the subsidy system a failure on the part of a state to give implicit obedience is the exception rather than the rule.

The arguments in favor of the extension of national control through subsidies are to a large extent the well-known arguments in favor of centralization and these need not be repeated here. It is further argued that the subsidy system preserves our dual system of government, leaving inherent power with the states but at the same time giving to the national government a mild form of authority which is conducive to uniformity.

Against the continuance and further growth of the subsidy system are offered the equally well-known arguments against centralization and in support of local autonomy. It is pointed out further that the encroachment on local autonomy under the subsidy is more insidious and dangerous to free government than abrupt and open moves toward centralization. It is contended also, and with some truth, that the singling out by the national government of certain activities for encouragement, draws state funds away from other equally worthy activities. Some educators say that it often happens that money which should be spent by the state on its general educational program is diverted to vocational education in order to secure the national allotment. Sometimes a state has limited funds at its disposal and is tempted to match the national allotment first, regardless of the claims of other branches of the state government upon the state treasury.

At present popular opinion seems to look with favor upon the subsidies, except possibly in connection with the land-grant colleges where there seems to be considerable objection to national interference. Perhaps it will be discovered that the encroachment of the national government in the field of education is less desirable than it is in the matter of public health, rehabilitation and road building.

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## LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

**Soldiers' Bonus.** Since the close of the World War, one of the most generally agitated public questions has been that of granting a bonus of some character to the ex-service men. The subject is now before Congress, has been considered by practically every state legislature, and has been acted on affirmatively by thirty-eight states. In six states, it was necessary to amend the constitution to permit the legislature to enact a soldiers' bonus law. In five of these states, the amendment was ratified by an impressive majority of the vote cast, and in one state, the election has not yet been held. The following table shows the result of the vote on the constitutional amendments heretofore submitted to the electors.

### CONSTITUTIONAL AMENDMENTS

STATE	ART. AND SEC.	DATE SUBMITTED	VOTE	
			Yes	No
Maine.....	New, Sec. 19, Art. IX	Sept. 1920	105,712	32,820
Michigan.....	New, Sec. 20, Art. X	April 1920	471,159	185,602
Missouri.....	New, Sec. 44b, Art. IV	August 1921	210,238	100,131
Ohio.....	Sec. 2a, Art. VIII	Nov. 1921	949,109	324,447
Oregon.....	New, Art. XIc	June 1921	88,219	37,866
Pennsylvania..	Sec. 4, Art. IX	Nov. 1924		

The bonus has been extended to soldiers in various forms, including the payment of a prescribed sum of money generally known as the cash bonus; loans for the purpose of acquiring a farm or a home, known as the land settlements; the remission of fees or the payment of a bonus direct to enable students to complete their education, known as the educational bonus; provisions for affording employment; and the payment of a gratuity to soldiers who are disabled and are physically unfit for profitable employment.

**Cash Bonus.** The cash bonus has been adopted and is now in force in Maine, Massachusetts, Michigan, Missouri, New Jersey, Ohio,

Rhode Island, South Dakota, Wisconsin and Washington. Cash bonus laws have been enacted and are awaiting submission to a referendum vote in Illinois, Iowa, Kansas, Maryland, Montana and Pennsylvania; and provision for an optional cash, loan or educational bonus has been made in Minnesota, North Dakota and Oregon. The aggregate amount of money necessary to pay the foregoing enumerated bonuses is approximately \$321,000,000. The following tables show the cash bonus laws now in force or awaiting the referendum, the amount of the bond issue and the amount of the bonus paid.

CASH BONUS  
(a) *Laws Adopted and in Force*

STATE	AMOUNT OF BOND ISSUE	AMOUNT OF BONUS
Maine <sup>1</sup> .....	\$ 3,000,000	\$100
Massachusetts <sup>2</sup> ...	20,000,000	\$100
Michigan <sup>3</sup> .....	30,000,000	\$15 each month of service
Missouri <sup>4</sup> .....	15,000,000	\$10 for each month of service, not to exceed \$250
New Jersey <sup>5</sup> .....	12,000,000	\$10 for each month of service, not to exceed \$100
Ohio <sup>6</sup> .....	25,000,000	\$10 for each month of service, not to exceed \$250
Rhode Island <sup>7</sup> ...	2,500,000	\$100
South Dakota <sup>8</sup> ...	6,000,000	\$15 for each month of service, not to exceed \$400
Washington <sup>9</sup> ....	11,000,000	\$15 for each month of service
Wisconsin <sup>10</sup> .....	15,000,000	\$10 for each month of service, not less than \$50

<sup>1</sup> Laws Special Session 1919, p. 62 and 264; Laws 1921, p. 113, 144 and 301.

<sup>2</sup> Laws 1919, p. 225; Laws 1920, Ch. 250.

<sup>3</sup> Laws 1921, p. 753, 759 and 834.

<sup>4</sup> Laws 1921, p. 695.

<sup>5</sup> Laws 1920, p. 317; Laws 1921, Ch. 16 and 293. This law was submitted to the voters on November 2, 1920, and was ratified by a vote of 534,532 to 165,555.

<sup>6</sup> Laws, 1921, p. 620.

<sup>7</sup> Laws 1920, Ch. 1832; Laws 1921, Ch. 2048. The question of a bond issue was submitted to a referendum vote and carried by a vote of 10,535 to 1,303.

<sup>8</sup> Laws 1921, p. 502.

<sup>9</sup> Laws Special Session 1920, p. 7. This act was submitted to the electors in Nov., 1920, and was approved by a vote of 224,356 to 88,128.

<sup>10</sup> Laws 1919, Ch. 452 and 667. This act was submitted to the people on Sept. 2, 1919, and carried by a vote of 165,762 to 57,324. During the period ending 1920, the sum of \$16,102,006.45 in bonus tax was collected.

(b) *Laws to be Submitted to Referendum Vote*

STATE	AMOUNT OF BOND ISSUE	AMOUNT OF BONUS
Illinois <sup>1</sup> .....	\$55,000,000	50¢ for each day of service, not to exceed \$300
Iowa <sup>2</sup> .....	22,000,000	50¢ for each day of service, not to exceed \$350
Kansas <sup>3</sup> .....	25,000,000	\$1 for each day of service
Montana <sup>4</sup> .....	4,500,000	\$10 for each month of service, not to exceed \$200
Pennsylvania <sup>5</sup> ....	35,000,000	\$10 for each month of service, not to exceed \$200
Maryland <sup>6</sup> .....		

<sup>1</sup> Laws 1921, p. 66. This law will not become operative unless approved by the voters at the election of November, 1922.

<sup>2</sup> Laws 1921, p. 371. This law will not become operative unless approved by the voters at the general election of 1922.

<sup>3</sup> Laws 1921, p. 407. This law will not become operative unless approved by the voters at the general election of 1922.

<sup>4</sup> Laws 1921, p. 307. This law will not become operative unless approved by the voters at an election in 1922.

<sup>5</sup> Laws 1921, p. 478 and 1236; amendment will not be submitted to the people until November 1924.

<sup>6</sup> Laws 1922.

## CASH, LOAN AND EDUCATIONAL BONUS

STATE	AMOUNT OF BOND ISSUE	AMOUNT OF BONUS
Minnesota <sup>1</sup> .....	\$20,000,000	\$15 for each month of service, not less than \$50; or allowed \$200 tuition fees in obtaining education to July 1, 1924
North Dakota <sup>2</sup> ...	One mill tax	\$25 for each month of service to purchase a home or farm or complete his education
Oregon <sup>3</sup> .....	Not exceeding 3 per cent of assessed valuation of property of state	\$15 for each month of service, not exceeding \$500 or a real estate loan of \$4000

<sup>1</sup> Laws 1919, p. 362; Laws 1921, p. 264 and 774; Laws Special Session 1919, P. 72.

<sup>2</sup> Laws 1919, p. 398; Laws 1919 Special Session, Ch. 55; Laws 1921, Ch. 103.

<sup>3</sup> Laws 1921, p. 823, 622 and Ch. 201.



*Court Decisions.* The soldier bonus acts have been before the courts on several occasions and have been sustained in Minnesota, Washington and Wisconsin and held invalid in New York. (144 Minn. 415; 170 Wis. 218 and 251; and 231 N. Y. 465.)

*Land Settlement Acts.* Another form of aid to soldiers are the so-called land settlement acts. These laws are so designed as to extend aid to veterans of all wars, including the World War. In some states, they are provided for in addition to the bonus and incidentally are calculated to assist in the pre-emption and cultivation of lands not already under private ownership. There were three states in which constitutional amendments on this subject have been submitted to the people.

LAND SETTLEMENT—CONSTITUTIONAL AMENDMENTS

STATE	DATE SUBMITTED	VOTE		PROVISIONS
		Yes	No	
Kansas <sup>1</sup> .....	Nov. 1920	223,499	201,559	Amount of fund determined by legislature. Issue of \$1,000,000 of bonds.
Missouri <sup>2</sup> .....	Nov. 1920	379,156	348,749	
Oregon <sup>3</sup> .....	June 1919	39,130	40,580	

<sup>1</sup> Laws 1919, p. 448.

<sup>2</sup> Laws 1921, p. 709

<sup>3</sup> Laws 1919, p. 837.

There are 18 states which have enacted settlement acts including Arizona,<sup>1</sup> California,<sup>2</sup> Colorado,<sup>3</sup> Idaho,<sup>4</sup> Maine,<sup>5</sup> Missouri,<sup>6</sup> Montana,<sup>7</sup> Nevada,<sup>8</sup> New Mexico,<sup>9</sup> North Carolina,<sup>10</sup> Oregon,<sup>11</sup> South Carolina,<sup>12</sup>

<sup>1</sup> Laws 1919, Ch. 141; Laws 1920, Ch. 58.

<sup>2</sup> Laws 1917, p. 1566; Laws 1919, p. 838; Laws 1921, p. 959 and 969. Will be submitted to a vote of the people in Nov. 1922.

<sup>3</sup> Laws 1919, Ch. 151.

<sup>4</sup> Laws 1919, Ch. 24.

<sup>5</sup> Laws 1919, Ch. 189.

<sup>6</sup> Laws 1919, p. 704; Laws 1921, p. 394.

<sup>7</sup> Laws 1919, Ch. 201.

<sup>8</sup> Laws 1919.

<sup>9</sup> Laws 1919, Ch. 127.

<sup>10</sup> Laws 1919, Ch. 266.

<sup>11</sup> Laws 1919, Ch. 303.

<sup>12</sup> Laws 1919.

South Dakota,<sup>13</sup> Tennessee,<sup>14</sup> Utah,<sup>15</sup> Washington,<sup>16</sup> Wisconsin,<sup>17</sup> and Wyoming.<sup>18</sup> The provisions of these laws are substantially identical. They provide for the creation of a board with authority to administer the land settlement fund; establish a fund either by appropriation or a bond issue; provide for coöperation with the United States government; the loaning of money at low rates of interest, long terms and small annual payments to soldiers and other persons who are eligible to avail themselves of the provisions of the act; and afford in some cases instruction in the science of agriculture and provide employment for soldiers. The Washington soldiers' settlement act, giving soldiers a preference in the right to purchase lands, was upheld in *State v. Clausen* (110 Wash. 525) as not in violation of the equal privileges and immunities clause of the constitution.

*Educational Bonus.* The educational bonus is designed to assist students in the completion of their education and is usually granted in lieu of a cash bonus. There are 13 states which have made provision by law for an educational bonus, including California,<sup>19</sup> Colorado,<sup>20</sup> Illinois,<sup>21</sup> Iowa,<sup>22</sup> Kentucky,<sup>23</sup> Minnesota,<sup>24</sup> New York,<sup>25</sup> North Dakota,<sup>26</sup> Ohio,<sup>27</sup> Oregon,<sup>28</sup> South Carolina,<sup>29</sup> Washington and Wisconsin.<sup>30</sup> Six of these (California, Colorado, Oregon, South Carolina, Washington and Wisconsin) provide both for land settlement and educational bonus.

<sup>13</sup> Laws 1919, Ch. 315; Laws 1921, Ch. 325.

<sup>14</sup> Laws 1919, Ch. 140.

<sup>15</sup> Laws 1919, Ch. 74; Laws 1921, Ch. 75; Laws 1919, Ch. 106; Laws 1921, Ch. 76.

<sup>16</sup> Laws 1919, Ch. 188; Laws 1921, Ch. 90.

<sup>17</sup> Laws 1919, Ch. 596.

<sup>18</sup> Laws 1919, Ch. 143.

<sup>19</sup> Laws 1921, Ch. 579. Question of a bond issue is to be submitted to the people in Nov. 1922. (Ch. 578).

<sup>20</sup> Laws 1919, Ch. 23.

<sup>21</sup> Laws 1919, p. 922.

<sup>22</sup> Laws 1919, Ch. 160.

<sup>23</sup> Laws 1920, Ch. 67.

<sup>24</sup> Laws 1919, Ch. 338; Laws 1921, Ch. 214.

<sup>25</sup> Laws 1919, Ch. 606; Laws 1920, Ch. 893.

<sup>26</sup> Laws 1919.

<sup>27</sup> Laws 1921, p. 356.

<sup>28</sup> Laws 1919, Ch. 428; Laws Special Session 1920, Ch. 56 and 12; Laws 1921, Ch. 201, Sec. 8.

<sup>29</sup> Laws 1920, p. 973.

<sup>30</sup> Laws 1919, Special Session, Ch. 5; Laws 1921, Ch. 394 and 327.

In an act of 1921, California has provided for the creation of the veterans' educational institution, which is in charge of a veterans' welfare board and is to be operated for the benefit of World War veterans. The board is authorized to pay the transportation of students to and from the institution, tuition, fees, books and supplies. A monthly allowance of \$40, or not to exceed \$1,000 for each student, is made. Out of an aggregate appropriation of \$200,000, Colorado provides for loans of not to exceed \$200 to students to complete their education. Illinois grants free scholarships to any of the state institutions; Iowa lengthens the term of attendance at school and provides free tuition; Kentucky grants expenses at the state schools, including tuition, fees, room rent, fuel, light and traveling expenses; Minnesota affords funds for expenses not exceeding \$200; New York established 450 scholarships which pay a stipend of \$100 for tuition and \$100 for maintenance; North Dakota grants \$25 for each month of service, which may be applied in obtaining an education or purchasing a home; Ohio remits all tuition and matriculation fees at state schools; Oregon pays \$25 per month or not to exceed \$200 per year for four school years; South Carolina and Washington remit all tuition at state schools; and in lieu of the cash bonus, Wisconsin pays \$30 per month or not to exceed \$1080 to any student.

*Disability Bonus.* Nebraska has authorized the board of educational lands and funds to purchase \$2,000,000 worth of securities and administer the income derived therefrom in the purchase of food, wearing apparel, medical or surgical aid, care or relief of soldiers.<sup>31</sup> In Iowa, all funds remaining after the bonus is paid is used as a disability fund; and in Wisconsin the service recognition board may pay any soldier \$30 per month as a disability pension.<sup>32</sup> Vermont has extended state aid to World War veterans the same as soldiers of former wars.<sup>33</sup>

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**1921 Legislation Respecting Elections.** Changes in general election laws in the various states in 1921 were numerous, but with a few exceptions (as with respect to absent voting, corrupt practices, and voting machines) not of great significance. Two states, Missouri (*Laws*, 1921, pp. 315, 330) and New Jersey (*Laws*, 1921, ch. 196, pp.

<sup>31</sup> Laws 1919-21, Ch. 40.

<sup>32</sup> Laws 1919, Ch. 457.

<sup>33</sup> Laws 1919, p. 178.

516 ff.) completely revised their election laws, the latter chiefly for the purpose of correcting the previous enactments, and the former thoroughly revising the laws dealing with elections in cities of over 100,000 population and counties of over 150,000.

Individual enactments of more than usual importance include the adoption by South Dakota of nonpartisan elections for judges of the supreme, circuit and county courts (*Laws*, 1921, ch. 224, p. 331); and the abolition by the state of New York of the office of state superintendent of elections and the transfer of the function of investigating offenses against the election laws to the local boards of elections (*Laws*, 1921, ch. 555, p. 1683).

Qualifications for voting have been changed in Nebraska and New York. In Nebraska only citizens of the United States are now permitted to vote (*Laws*, 1921, ch. 92, p. 324). New York, by referendum, has added to its other qualifications for voting the ability to read and write English. As opposed to this development in New York, it should be noted that New Jersey, by a change in its law (*Laws*, 1921, ch. 196, p. 568) provides assistance in marking their ballots for persons who cannot read English.

In Tennessee the so-called "Dortch Act" of 1890, a general ballot law heretofore applying to cities and counties of certain size, has been made applicable to all counties, cities, towns and civil districts of the state without regard to population (*Laws*, 1921, ch. 117, p. 289). The effect of the passage of this law is to provide for the Australian ballot in all elections in the state of Tennessee.

Maine (*Laws*, 1921, ch. 70, p. 72) has given the towns of the state the option of adopting the Australian ballot for the election of town officers. Heretofore the Australian ballot has been in use in Maine in national, state, county and city elections. The towns, however, continued the time-honored practice of electing the town officers at the town meetings in the manner usual to parliamentary bodies—by ballot, as the election of each officer was reached in its order in the proceedings. The purpose of the new law is to save time in the election of town officers, a matter of imperative necessity with the increase in population of many towns and the doubling of the suffrage in all of them. A practical result may be that the town meeting will lose much of its importance.

A new law in California (*Laws*, 1921, ch. 651, p. 1098) provides for the adoption by any city, county, or "city and county" of a method of counting the ballots which has been in use in San Francisco for several

years. By the method of "central count," as it is called, the ballots, instead of being counted in the precincts and the returns made to a county officer, are sealed in the ballot boxes in the precincts and brought to a public building centrally located. There the ballots from all the precincts are counted publicly in a large room under the direction of the officers having charge of the election. The experience in San Francisco indicates that the advantages of this method of counting are that it saves time and expense, and in addition makes it easier to prevent fraud. It would seem, however, to be particularly useful only for cities or for counties small in area and densely populated.

California (*Laws*, 1921, ch. 525, p. 828), Colorado (*Laws*, 1921, ch. 117, p. 295) and Rhode Island (Pub. *Laws* 1921, January session, ch. 2029, p. 49) have repealed their laws authorizing the use of voting machines in public elections. On the other hand, New York makes the use of voting machines obligatory in cities of the first class (*Laws*, 1921, ch. 391, p. 1228). It is provided that machines must have been installed in twelve per cent of the polling places in the cities affected in time for the general election of 1921, in thirty-five per cent of the polling places by 1922, and by 1923 they must be in use in all polling places. If the proper local authorities fail to make provision for the use of voting machines, the secretary of state may take the necessary action.

Arkansas has changed the time for holding general elections for state, county and township officers, whose terms are set by the state constitution at two years, from the second Monday in September to the next Tuesday after the first Monday in October in the even numbered years (*Laws*, 1921, ch. 81, p. 74).

New Jersey assists in promoting party solidarity by making it possible to vote with one mark for all the candidates of one party for presidential electors (*Laws*, 1921, ch. 196, p. 559).

A number of states have made changes of no great significance, for example, increasing the number of election officers at general elections when the number of voters is increased, a provision no doubt made necessary by the adoption of woman suffrage (California, Iowa, Kansas, Nebraska, Oregon); providing penalties for false certification by election officers (Colorado); providing that a voter moving from his precinct within thirty days of election shall not lose his vote (South Dakota); assisting blind and otherwise disabled voters (New Jersey, New Mexico); prohibiting electioneering within one hundred feet of the polls (New Jersey).

*Absent Voting.* Arizona (*Laws*, 1921, ch. 117, p. 253), Nevada (*Laws*, 1921, ch. 90, p. 153) and West Virginia (*Laws*, 1921, ch. 55, p. 158) have passed new absent voting laws, and Nebraska (*Laws*, 1921, ch. 94, p. 350), Texas (*Laws*, 1921, ch. 113, p. 218) Vermont (*Laws*, 1921, act no. 4) and Washington (*Laws* 1921, ch. 143, p. 529) have made important changes in the existing laws on this subject. The Arizona and Nevada laws, which are much alike, provide that a voter expecting to be absent from the county in which he lives on the day of any election may, upon application to the appropriate county officer, receive by mail or in person an absent voter ballot. He may then, in the presence either of the county officer or of some person authorized to administer oaths, mark the ballot and hand or mail it to the county officer, by whom it is transmitted to the precinct in which the voter lives. The ballot is canvassed just as any other ballot cast in the precinct. Both of these statutes provide adequate protection for the honesty and secrecy of the vote. The penalty for violation of the Arizona act is rather light—fine not to exceed \$100, or imprisonment not to exceed thirty days, or both. On the other hand, the penalty for violation of the Nevada statute is imprisonment in the penitentiary for a term not less than one year and not to exceed five years.

The West Virginia statute is similar to that passed in Arizona and Nevada, except that it applies only to voters who expect to be absent from the state on election day. The changes in the Nebraska and Washington laws permit the voter who expects to be absent from the county where he resides on election day to vote by mail for all offices for which the election is held, including county and other local officers. Previously the laws in these states permitted the absent voter to vote on state offices only. The Texas law, which is very badly drawn, applies only to primary elections, and the amendment adopted in 1921 is to provide two methods of voting, one in person and the other by mail. The change in the Vermont law concerns the time within which application for absent voter's ballot must be made.

It appears from an examination of the changes in absent voting laws that the tendency is to provide means by which an elector absent from his voting precinct can have as full and complete privileges as if he were present. Earlier laws on this subject permitted the voter to cast his ballot at any place in the state where he happened to be on election day, and in several states this limited him to voting only for state officers. The later laws afford the privilege to the voter to participate also in the elections of county, town and city officers. That is why

there must be provided special ballots for absent voters, and methods for issuing them and for insuring that they will be voted under some public auspices and transmitted to the proper precincts protected from dishonesty and without violating the voters' confidence.

*Corrupt Practices.* Arizona (*Laws*, 1921, ch. 172, p. 428), California (*Laws*, 1921, ch. 583, p. 983), Iowa (*Laws*, 1921, ch. 197, p. 206), Kansas (*Laws*, 1921, ch. 184, p. 277), New Jersey (*Laws*, 1921, ch. 196, p. 595), South Dakota (*Laws*, 1921, ch. 227, p. 335), and Wisconsin (*Laws*, 1921, ch. 161) have made changes in their corrupt practices laws. In Arizona by the former law, candidates for various offices in primary elections were limited in their campaign expenditures to a certain maximum for all purposes. The new provision is for the same maximum expenditures, but is exclusive of payment for stationery, postage, printing, and advertising in newspapers and moving picture shows.

The California law extends the corrupt practices regulations to referendum elections as well as to campaigns for office. Every person, committee, firm, association, or public or private corporation which spends money for the purpose of securing the enactment or defeat of any referendum measure is obliged to file a statement of contributions and expenditures for campaign purposes within twenty days after the election, and these are to be made public. Violation of the act is punishable by a fine of \$1000, one-half of which goes to the treasury of the county in which the indictment is brought and one-half to the person lodging the information. Violation is also subject to a civil suit by any citizen for the recovery of an additional penalty of \$1000.

A previous Iowa law provided that a statement of expenditures should be filed by candidates ten days after election. The new amendment provides that if a candidate receives any additional sums after the election he must file a sworn statement within thirty days after receipt. It is also provided now that a candidate may not spend in excess of fifty per cent of the annual salary of the office to which he aspires in the primary campaign nor more than fifty per cent in the campaign for subsequent election.

The Kansas act extends the time of filing statements of expenditure from ten days after election, as provided in the 1915 law, to thirty days.

The most significant change in the New Jersey law is the increase in the amounts which may be spent in aid of candidates for state offices as follows: for governor or United States senator, \$50,000 in the primary campaign and \$50,000 in the election campaign, instead of \$25,000 in each as heretofore; for the House of Representatives, \$7500

in each campaign instead of \$3,500 as heretofore; for state senator ten cents for each voter in each campaign instead of five cents; for election as a delegate to a national convention, \$10,000 instead of \$5000 as formerly; for state committees, \$500 instead of \$100; for county or municipal committees, \$50 instead of \$25. On the other hand, for county offices without fixed salary five cents for each voter may now be spent instead of ten cents as heretofore.

The South Dakota law prohibits the publication of paid advertising matter in newspapers or other periodicals, for the purpose of influencing voters at an election, unless headed "paid advertising" and accompanied by the name and address of the candidate benefitted, of the person authorizing the publication, and of the author.

The Wisconsin act provides that if a candidate receives nothing or spends nothing in his campaign, he shall file a statement to that effect.<sup>1</sup>

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**Party Affiliation Tests in Primary Election Laws.** A comparison of party affiliation provisions of state laws effective in 1920 and those in force in 1908 points to two interesting conclusions regarding the general trend of legislative attitude toward the primary election.

The figures of the accompanying table indicate that during that period, there was a growing desire for official definition and administration of the tests of an elector's eligibility to participate in party primary elections. During these twelve years, seven state legislatures deprived the political parties of the sole authority to designate who should, and who should not, participate in their nominating elections. As a result of this change, six of the states involved adopted an official definition of the test, while the seventh was content to share the authority with the political parties.

<sup>1</sup> The legislatures of Alabama, Kentucky, Louisiana, Maryland, Mississippi and Virginia were not in session in 1921. No laws of any significance with respect to the subjects covered in these notes were passed by the legislatures of Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Utah and Wyoming.

In the preparation of these notes the author has had the assistance of Professor R. C. Brooks of Swarthmore College, Professor Clarence W. Peabody of the University of Maine, Miss Amelia L. Hedges of Stanford University, Mr. Miller McClintock of Harvard University, Mr. Rodney L. Mott, of the University of Wisconsin, and Miss Louise Overacker of Vassar College.



The favor in which the official test is held is shown by the fact that of the primary laws in force in 1920, thirty-one provide that the entire test shall be defined by the legislature. In six states the legislature prescribes part of the test and permits the party holding the primary to specify additional qualifications. In only seven states are the political parties given unrestricted jurisdiction.

Regulations for administering the tests likewise show evidence of a trend toward increased official control. During the period indicated the political parties of six states lost the power to require enrollment under party supervision as a prerequisite for participation in the primary election. Perhaps the most striking indication of the general trend is to be noted in the figures regarding registration. Between 1908 and 1920 fifteen additional states adopted some form of official registration.

A second conclusion which may be drawn from the comparison is that while the legislatures were assuming a greater share in defining and administering tests of party affiliation, they were at the same time more effectively protecting party organization. The comparison shows that on the whole the primary election is becoming more strictly a closed primary.

This conclusion is substantiated by the figures regarding registration, which show a material increase in the number of states requiring an official registration of party affiliation as a basis for participation in the party primary. As a result of this change, increased difficulties were placed in the way of the elector who wished to change his party affiliation. Under the official registration provisions in twenty-six states the political party is comparatively safe from invasion at the primary.

This same tendency toward greater protection to party integrity is shown, though somewhat less significantly, by the figures indicating changes in the types of tests required. The single test of present affiliation, which offers a minimum of protection to the party organization lost four supporters, while the similarly unprotective test of future intention lost two. The relatively high protective test of past allegiance retained the same number of supporters. There was, however, a significant shift toward what may be called complex declarations, usually requiring a statement of affiliation upon two or more grounds, though occasionally permitting alternatives. Six states participated in the change to the complex declaration.

## CHANGES IN PARTY AFFILIATION PROVISION OF STATE PRIMARY ELECTION LAWS

	1908*	1920†
I. Open Primary .....	4	3
II. Closed Primary		
A. Authority prescribing test		
1. The political party.....	14	7
2. The legislature.....	25	31
3. Party and legislature.....	5	6
B. The voter's declaration		
1. Past allegiance only.....	5	5
2. Present affiliation only.....	17	13
3. Future intention only.....	4	2
4. Past action and (or) present affiliation.....	1	6
5. Past action and (or) future intention.....	3	3
6. Present affiliation and (or) future intention.....	5	8
7. Past action and (or) present affiliation, and (or) future intention.....	4	2
C. Record of declaration		
1. Declaration at primary—no preserved record.....	15	12
2. Enrollment under party supervision.....	7	1
3. Official registration.....	11	28

\* Summary in Schaffner, *Primary Elections* (University of Wisconsin, 1908), and laws in effect.

† From a survey of primary election laws effective in 1920.

In summary then, the comparison shows increase in the number of states officially defining and administering tests of party affiliation, and at the same time additional provisions for protection of party organization.

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## JUDICIAL DECISIONS ON PUBLIC LAW

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*Administrative Law—Uncontrolled Discretion of Administrative Officer—Freedom of Speech.* *State v. Coleman* (Connecticut, Supreme Court of Errors, April 27, 1921, 113 Atl. 385). The charter of the city of Meriden, Connecticut, gives authority to the council to make ordinances for the proper use and regulation of public highways and places. In pursuance of this authority an ordinance was enacted providing that no person shall use the streets, sidewalks, parks, or public squares for the purpose of delivering orations, speeches, or other public demonstrations, without first obtaining a permit from the chief of police. The ordinance contained nothing to serve the chief of police as a guide in the exercise of the discretion thus conferred upon him. This ordinance was held to be unconstitutional, Section 5 of the bill of rights of the constitution of Connecticut declares that "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty." This clause clearly recognizes a qualified right inhering in the citizens. That qualified right is violated by conferring upon an administrative officer the personal and arbitrary power to say who may exercise it and who may not. The fact that the chief of police in question may exercise his discretion fairly or the fact that the defendant may have been about to abuse his qualified right of free speech are both wholly irrelevant matters. A right which exists only as the result of an act of grace upon the part of an administrative officer is not a right at all. The case is clearly in line with the weight of authority.

*Aliens—State Constitutional Guaranties of Free Speech, Press, Assembly and Petition Confined to Citizens.* *State v. Sinchuk* (Connecticut, Supreme Court of Errors, August 14, 1921, 115—Atl. 33). In 1919 the legislature of Connecticut enacted a sedition law forbidding disloyal or scurrilous utterances against the United States, its form of government, flag, etc. The defendants, who were aliens, upon con-

viction under this statute attacked its constitutionality under several provisions of the bill of rights of the state constitution. The court did not enter upon a consideration of the validity of the law, but took the position that since the defendants were aliens they were not entitled to the protection of the constitutional clauses invoked and could not, therefore, attack the statute as a violation of their constitutional rights. The defendants had relied upon four clauses of the bill of rights of the constitution of Connecticut. The first of these declares that "All political power is inherent in the people. . . . they have at all times an indefeasible right to alter their form of government in such a manner as they think expedient." The court declared that the "people" referred to in this provision clearly cannot include aliens who have no political power at all. The next two guaranties relied upon were respectively: "The citizens have a right peaceably to assemble and petition the government," and "Every citizen may freely speak, write and publish his sentiments . . . ." The court held that these clauses by their own words were confined in their application to citizens. A more difficult problem was presented by the fourth provision of the bill of rights pleaded by the defendants which declared that "No law shall ever be passed to curtail or restrain the liberty of speech or of the press." This is quite obviously not limited by its terms to citizens but seems to state a general restriction upon legislative power. The court, however, took the position that by its proximity to the clauses before quoted it must be inferred that this clause was intended for the protection of citizens only and not aliens. In support of this conclusion the court relied upon an early case (*Jackson v. Bulloch*, 12 Conn. 38) in which it had been held that the general guaranty in respect to the writ of habeas corpus in the Connecticut bill of rights did not apply to slaves. In that case it had been said: "The language seems evidently limited to those who are parties to the social compact thus formed. Slaves cannot be said to be parties to that compact, or to be represented in it." The inference from the present case would seem to be that aliens, not being parties to the "social compact," are outside the protection of the provisions of the bill of rights of the constitution of Connecticut unless by the words of those provisions they are unmistakably included.

*Civil Service Promotions—Preference for Soldiers and Sailors.* *Barthelmess v. Cukor* (New York, Court of Appeals, July 14, 1921, 132 N.E. 140). It is provided by the New York constitution that "appointments

and promotions in the Civil Service shall be made according to merit and fitness to be ascertained, so far as practicable, by competitive examination, provided that honorably discharged soldiers and sailors from the army and navy in the late civil war shall be entitled to preference in appointment and promotion without regard to their standing on any list." By a statute passed in 1920 it was provided that preference in respect to promotion in the civil service should be given to soldiers and sailors of the World War who take the examination for promotion while in the military or naval service or who, having taken the examinations, enter such service. The act was repealed within a short time but the repeal was to take effect without affecting rights which had been created by it. The statute creating the preference was held to be unconstitutional. The authorization of a preference in civil service for civil war veterans made it plain that the legislature had no authority without specific constitutional authorization to extend a similar preference to any other group of soldiers and sailors. We have here a case of what has been called a "resulting limitation," in which a specific grant of power to the legislature to do a particular thing operates as a prohibition upon doing a different but very similar thing. The court also finds that the effect of the preference statute coupled with the repeal would result in arbitrary discrimination by establishing a very small class of civil service employees who would enjoy special privileges which would be henceforward denied to others in like circumstances.

*Declaratory Judgments—The Nature of Judicial Power.* *State v. Grove* (Kansas, October 8, 1921, 201 Pac. 82). A statute enacted by the legislature of Kansas authorized the courts to issue declaratory judgments in cases where no consequential relief was sought by the parties. The question of the constitutionality of this act is raised in this case and the act is held to be valid. The chief ground of attack against this type of legislation is that it involves a legislative imposition of non-judicial duties upon the courts which constitutes a violation of the doctrine of the separation of powers. This was the basis of the decision of the supreme court of Michigan invalidating a declaratory judgment act. See *Anway v. Grand Rapids Ry. Co.*, 179 N. W. 350 (1920). The supreme court of Kansas indulges in a somewhat elaborate discussion of the Michigan case, but finds itself unable to accept the premise upon which the line of reasoning just outlined rests, namely, that a declaratory judgment act actually confers upon the courts the duty of exercising a non-judicial function. This view of the matter it

holds to be erroneous. It arises from a confusion of the declaratory judgment with the advisory opinion, which the Kansas tribunal holds to be entirely different in nature. In rendering an advisory opinion the court does actually perform a non-judicial function since there are no parties litigant and no actual case or controversy presented to the court. In the case of a declaratory judgment, however, there is an actual judgment rendered respecting the rights of actual parties litigant, even though there may be no consequential relief sought. This decision would seem to harmonize with the weight of professional opinion upon this question.

*Delegation of Legislative Power—Incorporation into State Law of Act of Congress.* In re Opinion of the Justices (Massachusetts, November 22, 1921, 133 N.E. 453). A bill for the enforcement of the Eighteenth Amendment was submitted to the supreme court of Massachusetts by the legislature with a request for an opinion as to its validity. The bill incorporated in its provisions various acts of Congress, either acts already in force or acts which might in the future be passed. Such incorporation of congressional statutes was held by the court to be an unconstitutional delegation of legislative power inasmuch as an integral part of the legislative policy of the state is, by this process, to be determined not by the state legislature but by the national legislature. When the Eighteenth Amendment authorizes the exercise of concurrent legislative power by state and nation for its enforcement it does not contemplate the enactment of laws in any new way. It intends merely that both governments shall be empowered to legislate according to their accustomed methods. The court points out, however, that there could be no constitutional objection to the enactment by the state legislature of laws couched in the same words, or employing the same standards or tests as may be found in acts of Congress.

The court concludes its opinion with a protest against the legislative policy of submitting to the court a long and intricate piece of legislation with the request that the court scrutinize it for constitutional defects and then discuss those defects. Requests for advance or advisory opinions ought to come in the form of questions upon specific points definitely raised.

*Equal Protection of the Law—Validity of Poll Tax Imposed Exclusively Upon Aliens.* Ex parte Kotta (California, September 12, 1921, 200 Pac. 957). By an act of 1921 a poll tax was imposed upon aliens

in the state of California but not upon citizens. The act was defended upon the ground that it provided the revenue necessary for the administration of the laws requiring registration of aliens and subjecting them to other regulatory provisions. The court, however, declared the statute to be unconstitutional as denying the equal protection of the law. It emphasized in its opinion the familiar principle that the equal protection of the law clause of the Fourteenth Amendment includes within its protection not merely citizens but "persons" and may, therefore be successfully invoked by aliens who have been subjected to arbitrary discrimination by the state.

*Industrial Disputes—Prohibition against Strikes and Lockouts in Businesses Affected with a Public Interest.* People v. United Mine Workers of America (Colorado, April 4, 1921, 201 Pac. 54). This case raised the question of the constitutionality of the Colorado Industrial Disputes Act of 1915. This statute provided for a system of dealing with industrial disputes commonly known as compulsory investigation. By its provisions a commission or board was created for the purpose of investigating and reporting upon the merits of disputes between capital and labor in the hope of facilitating the peaceful adjustment of differences. To this end all lockouts and strikes were forbidden prior to or during such an investigation by the state commission. The act applied only to industries which are affected with a public interest. In the present case the question was raised concretely whether the coal mining industry was affected with a public interest so that a strike in that industry would fall within the prohibitions of the act, and whether the state by its police power could forbid a strike in accordance with the provisions of the statute. The court held that coal mining is a business affected with a public interest. It held this to be true largely by reason of the vital importance of coal in the scheme of modern life. "We must take judicial notice," said the court, "of what has taken place in this and other states, and that the coal industry is vitally related not only to all other industries, but to the health and even the life of the people. Food, shelter, and heat before all others, are the great necessities of life, and in modern life, heat means coal." This is a line of reasoning which raises the query whether the courts may not yet come to the point of defining businesses affected with a public interest in simple terms of human necessity. The court then repudiated the argument that the anti-strike feature of the statute was a violation of the Thirteenth Amendment, pointing out that the individual workman

was not forbidden to quit his work for any reason or for no reason, and emphasizing that it is only the collective activity involved in a strike which is under the ban. The act does not, therefore, impose involuntary servitude. Nor does the provision forbidding incitements to strike violate the guaranties of free speech, since the police power of the state extends to the prohibition of incitement to do a thing which itself may be made unlawful.

*Jurors—Qualifications—Effect of Nineteenth Amendment upon Eligibility of Women.* *State v. James* (New Jersey, Court of Errors and Appeals, June 20, 1921, 114 Atl. 553); *Commonwealth v. Maxwell* (Pennsylvania, July 1, 1921, 114 Atl. 825). In the New Jersey case the defendant was convicted of first degree murder after the ratification of the Nineteenth Amendment but before the enactment of a statute making women eligible to serve on petit juries. The jury which convicted him had been chosen from a panel of five hundred persons none of whom were women. The defendant alleged that this procedure constituted a violation of the clause in the state constitution guaranteeing trial by an impartial jury. The court rejected this contention. It held that the constitutional clause in question guaranteed a trial by the jury known to the common law, quite obviously one from which women were excluded. Furthermore, the Nineteenth Amendment while it enfranchised women did not have any affect upon the qualifications of petit jurors since those qualifications are determined by the legislature of the state. And even if the statute subsequently enacted which permitted women to serve as jurors had been in force at the time of the defendant's trial it would not have had the result of requiring the presence of any women upon the jury. It would merely have required that women should not be excluded from the jury merely because of sex.

In the Pennsylvania case a different result was reached by reason of different statutory provisions. By an act passed in 1867 the jury commissioners in Pennsylvania were instructed to choose jurors from the whole body of qualified electors of the state. The court held that the Nineteenth Amendment by adding women to the body of qualified electors made them eligible to jury duty under the provisions of this statute without further legislative enactment.

*Privileges and Immunities of Citizens in the Several States—Grazing Privileges Upon Public Lands.* *Hostetler v. Harris* (Nevada, November 30, 1921, 197 Pac. 697). A Nevada statute forbade any person not



having his principal ranch in Nevada to graze cattle upon any unenclosed land in the state without first securing a license from the county sheriff after the payment of a substantial fee. The act provided a penalty for its violation, of not less than \$1000 nor more than \$10,000. The plaintiff paid under protest fees amounting to \$925 and brings action in this case to recover that amount. The court held that the statute was invalid as a violation of Art. IV, Sec. 2, of the Constitution of the United States which provides that "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

*Police Power—Equal Protection of the Law—Regulation of Rents in Large Cities.* State v. Railroad Commission (Wisconsin, July 10, 1921, 183 N.W. 687). By an act passed in 1920 an emergency arising out of the World War was declared to exist in respect to housing conditions and the charging of unjust and unreasonable rents was made unlawful. This law was made applicable only in counties with a population of 250,000 and over. The administration of it was placed in the hands of the state railroad commission. The statute was attacked in this case on the grounds of a denial of due process of law and the equal protection of the law. The court alluded to the decisions in which the New York Housing Law had been sustained as a proper exercise of the police power (People v. La Fetra, 130 N.E. 601; Brown Holding Co. v. Feldman 65 L. Ed. Sup. Ct. 539) but refrained from considering the Wisconsin statute upon this basis. It held, however, that the law did deny the equal protection of the law, inasmuch as it imposed upon the owners of property in populous counties restrictions from which property owners throughout the state generally were free. Such discrimination was held to be arbitrary in view of the fact, of which the court declared itself willing to take judicial notice, that housing conditions were acute throughout the state and not merely in the largest city of the state. The statute was declared to be unconstitutional on this ground.

*Police Power—Regulation of Qualifications for Practice of Medicine—Chiropractors and Osteopaths.* People v. Love (Illinois, June 22, 1921, 131 N.E. 809); Williams v. Scudder (Ohio, April 26, 1921, 131 N.E. 481). The Illinois case involved the question of the validity of the Medical Practice Act of 1917. By the provisions of that act the minimum standards of professional education for the practice of medicine or surgery were defined in terms of graduation from a medical school of

good standing. The same act provided that "for the practise of any system or method of treating human ailments without the use of drugs or medicine or operative surgery" the candidate must "be a graduate of a school or institution which requires as a prerequisite for graduation four years of instruction." The plaintiff in error was a chiropractor who had graduated from a two year course. It was brought out in argument before the court that there is no school of chiropractic in the country which requires four years instruction for graduation, so that the operation of the statute would be to bar all chiropractors from practice in the state of Illinois. The court held the statute to be invalid as an arbitrary and unreasonable exercise of the police power amounting to a denial of due process of law and the equal protection of the law. The court announced its willingness to take judicial notice of the value of chiropractic and osteopathy the practitioners of which could by no means be classed with charlatans. This being the case the court declared that the effect of the statute was to discriminate against one branch of the medical profession inasmuch as physicians and surgeons could be admitted to practice under the provisions of the act after graduation from a school requiring only two or three years instruction provided such school was approved by the state medical board.

In the Ohio case the adherents of chiropractic fared much less satisfactorily than in the Illinois decision. The case arose out of an application for an injunction to prevent the enforcement of the Medical Practise Act of 1915. This act outlines certain preliminary training to be required before candidates start upon the study of medicine or surgery. This preliminary training may be said to amount at least to the equivalent of a four year high school course or college entrance requirements. The statute further provides that chiropractic, osteopathy, magnetic healing, etc., shall also be subject to regulation, that the state medical board shall determine the standing of schools, that a certificate or diploma from such certified school shall be required for practice, and that the board "may adopt rules defining preliminary educational training which is less exacting" than is required for the practice of medicine or surgery. The state medical board, however, in spite of this last authorization, had refused to recognize and certify schools of chiropractic or other similar art which had less rigid preliminary requirements than those specified in the statute above mentioned. The result was that chiropractors in general were not permitted to take the examination for admission to practise since they ordinarily lacked this

preliminary educational training. The court held the statute to be constitutional. It noted the growing tendency to establish increasingly higher qualifications for those who enter the learned professions and held that the statute in question was free from discriminatory features and was a proper exercise of the police power of the state. The state medical board was not required to sanction more lax requirements for chiropractors, osteopaths, etc., than for regular practitioners of medicine and surgery, it was merely permitted to do so. Its refusal to do so was not a violation of the constitutional rights of any one and was justified in any case by the refusal of the schools of chiropractic to allow the board to examine into their courses of study and methods.

*Soldiers' Bonus—Extension of the Credit of State for Improper Purpose.* People v. Westchester County National Bank (New York, Court of Appeals, August 31, 1921, 132 N.E. 241). This case raises squarely the question of the validity of the New York Soldiers' Bonus Act of 1920. That act provided for the issuance of bonds to the amount of \$45,000,000 from the proceeds of which bonuses were to be paid to any persons in the military or naval forces who had rendered service for at least two months in the late war. It is interesting to note that the act, when submitted to a state-wide referendum, had been approved by a vote of 1,454,940 to 673,292. The New York court of appeals held the act to be unconstitutional. The court emphasized at the outset the fact that the bonus provided for is not for the benefit exclusively or even primarily of those who were disabled in military or naval service. Loans contracted by the state for the benefit of wounded soldiers would stand upon an entirely different constitutional basis from the payments contemplated by this statute, under which "he who occupied a perfectly safe but highly useful desk in a department, stands on a level . . . with that other who comes back to us shattered in mind or body by reason of more perilous service." The court admitted that the bonus provided for was for the public welfare and constituted a public purpose for which taxes might be constitutionally levied. It based its decision upon the limitations found in the constitution of New York upon the loaning or giving of the state's credit. These limitations are found in two places in the constitution. Art. 7, Sec. 1 declares that the "credit of the state shall not in any manner be given or loaned to or in aid of any individual." Art. 8, Sec. 9 provides that "neither the credit nor the money of the state shall be given or loaned to or in aid of . . . any private undertaking." The court held that these clauses imposed

restrictions upon the use of the state's credit more rigorous in character than the ordinary test of public use applicable to the taxing power. They forbid the use of money raised by state loans for the making of any sort of gift no matter how worthy the recipient of the gift may be. It was vigorously urged upon the court that the bonus payments were not gifts within the sense of the constitutional provisions quoted but should be regarded as payments made in recognition of a moral obligation resting upon the state. This view the court rejected. It took the position that while the services of the war veterans were appreciated by the state they had been rendered not to the state but to the nation and that any accruing obligation rested accordingly, not upon the state but upon the nation. The bonus must be looked upon, therefore, as a sheer gift and so within the prohibition of the constitution. A vigorous dissent was filed based upon the doctrine that the bonus ought to be regarded as a requital for services rendered rather than a gift.

*Suffrage—Tax-paying Qualification Upon Right to Vote in Municipal Elections Upon Proprietary Questions.* Carville v. McBride (Nevada, January 5, 1922, 202 Pac. 802). The constitution of the state of Nevada provides that all citizens of the United States who have reached the age of twenty-one years, who are not otherwise disqualified, and who have resided in the state six months and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers and upon all questions submitted to the electors at such elections. In the charter of the city of Elko, enacted by special act of the legislature in 1917, the right to vote in any municipal election upon the issuance of bonds or the granting of franchises was limited to tax-payers. In this case the plaintiff contested the validity of an election held upon the question of a bond-issue in which only tax-payers had been allowed to vote. He alleged that such a limitation upon the suffrage of persons otherwise qualified was a plain violation of the constitutional provisions summarized above. The court held the charter provision in question to be constitutional. It commented at some length upon the well recognized distinction between the governmental and proprietary functions of municipalities and the fact that cities enjoy greater freedom from restriction in respect to activities which are proprietary in character. It then concluded that the constitutional clause, declaring that duly qualified citizens should be entitled to vote "for all officers and upon all questions submitted to the electors at such elections," should be con-

strued to refer merely to officers and questions which are governmental in character and not those which are proprietary in character. It is interesting that the court should have chosen to support its decision by this somewhat novelline of reasoning rather than by the much more common doctrine that suffrage qualifications in state constitutions apply only to officers and elections mentioned in the constitution itself and not those of statutory origin, or the doctrine that the wide scope of legislative authority over municipalities includes the power to regulate the suffrage qualifications in municipal elections.

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

By vote of the Executive Council, the American Political Science Association will hold its next annual meeting at Chicago on December 27-29. The headquarters will be at the Congress Hotel, where the American Economic Association will also be in session. The committee on program consists of Professor R. T. Crane, University of Michigan, chairman; Professor R. G. Gettell, of Amherst College; and Professor C. G. Fenwick, of Bryn Mawr College.

Dr. David P. Barrows has resigned the presidency of the University of California, though it is understood that he will continue to discharge the duties of the office for another year.

Professor John C. Dunning, of Brown University, will be on sabbatical leave during the next collegiate year. He expects to devote his time chiefly to study in France. Mr. Leland M. Goodrich will have charge of his classes during his absence.

Mr. George B. Noble, assistant professor of political science at the University of Nebraska during the past two years, has accepted a similar position at Reed College.

Miss Luella F. Gettys, instructor in political science at the University of Nebraska, has been awarded the Susan B. Anthony research scholarship in politics for the year 1922-23 by Bryn Mawr College.

Dr. Frederick A. Middlebush, of Knox College, has been appointed associate professor of political science and public law in the University of Missouri. He gave courses during the summer at the University of Colorado.

Professor Herman G. James, of the University of Texas, has been appointed by the Carnegie Institution of Washington to make a study of the governmental system of Brazil. He went to Brazil in June and expects to spend about seven months in the country.

Dr. Malbone W. Graham, Jr., instructor in political science in the University of Missouri, has been appointed to a similar position in the University of Texas.

Mr. Irwin Stewart, graduate student at the University of Texas, and Mr. Ben Wright, a graduate student at Harvard University, have been appointed instructors in political science in the University of Texas.

Professor N. H. Debel, of Goucher College, gave two courses in American government in the summer session of the Johns Hopkins University.

Miss Elizabeth Merritt, who holds a doctor's degree from the Johns Hopkins University, has been appointed instructor in political science in Goucher College.

Professor Harold S. Quigley will continue for another year on leave of absence from the University of Minnesota and will remain in the Far East, teaching at Tsing Hua College at Peking and making a study of Far Eastern governments and politics.

Mr. Forrest R. Black, who supplied at the University of Minnesota last year, has accepted a position at Washington University, Saint Louis.

Mr. Rodney L. Mott, who has just received the doctor's degree at the University of Wisconsin, has been appointed to an instructorship in political science at the University of Minnesota.

The American University (at Washington) has added to its staff of lecturers in political science Ellery C. Stowell, formerly of Columbia University; William R. Manning, formerly of the University of Texas; Blaine F. Moore, formerly of the University of Kansas; Lester H. Woolsey, of the firm of Lansing and Woolsey; and Charles C. Tansill, of the Library of Congress.

Professor Geddes W. Rutherford, of Grinnell College, gave courses in political science at the summer session of the University of Kansas.

Dr. L. M. Short, of the University of Illinois, has been appointed instructor in political science at the University of Akron. During the summer he has been a member of the staff of the Institute for Government Research at Washington.

Professor K. F. Geiser, of Oberlin College, gave courses on European governments and municipal government in the summer session of the University of California. His courses at Oberlin have been in charge of Mr. Howard L. Hall, of the Harvard Law School.

Mr. Norman L. Hill, instructor in history and government at Denison University, has been appointed to an assistantship in political science at the University of Wisconsin.

In recognition of his services to the Chinese Government in connection with the Washington Conference, the President of the Republic of China has conferred upon Professor W. W. Willoughby, of the Johns Hopkins University, the Insignia of the First Class of the Order of the Chia-Ho with the Grand Cordon. This is the highest decoration conferred by the Chinese Government and has been received by very few foreigners.

Mr. Martin L. Faust, of Western Reserve University, will spend the next year in graduate study at the University of Chicago.

In a debate on the direct primary held at Philadelphia in May before the Pennsylvania State League of Women Voters the affirmative side of the question was taken by Professor Charles E. Merriam, of the University of Chicago, and the negative side by Congressman George S. Graham of Pennsylvania.

Professor John Bassett Moore, of Columbia University, who is a member of the Permanent Court of International Justice at the Hague, has been selected by President Harding and Secretary Hughes to represent the United States on the international commission of jurists to consider the amendment of the rules of war. Mr. Moore is the only American representative selected, although, under the terms of the



resolution adopted on February 4, 1922, by the Washington Conference two might have been named. The conference resolution provided that the United States, Great Britain, France, Italy, and Japan should select not more than two representatives each to consider the question of revising the rules of international law pertaining to new agencies of warfare. The United States is authorized by the resolution to fix the time and place for the meeting of the commission after consultation with the other powers.

The program of the Tenth Governmental Research Conference held at Cleveland, June 1-3, included sessions devoted to taxation, cost of government, criminal justice, the city manager plan, and the relation of research to universities.

In connection with the inauguration of Dr. R. B. von Kleinschmid as president of the University of Southern California, April 27, an extensive conference was held on Pan-American education, commerce, industry, and international relations. Fifteen foreign countries were represented.

The second conference on training for foreign service was held at Philadelphia on May 9 under the direction of the advisory council and committee of fifteen on educational preparation for foreign service, and in connection with the ninth annual foreign trade convention of the National Foreign Trade Council. The speakers at a session on the study of the social sciences in school and college as educational preparation for foreign service were Professors Philip M. Brown, of Princeton University, Professor W. I. Hull, of Swarthmore College, and Professor James P. Lichtenberger, of the University of Pennsylvania; and at a session on social forces in foreign relations, Professor S. P. Duggan, director of the Institute for International Education, and President W. W. Atwood, of Clark University.

A Pan American Conference, to be held in Santiago in March, 1923, has been authorized by the governing board of the Pan American Union. This Conference, which will probably last from six to eight weeks, will be the fifth that has been called since a union of the American republics was created. The first Conference, which was held in Washington in 1889, was presided over by James G. Blaine, then secretary of state. It was attended by representatives from all of the republics then existing

in the New World. Among the distinguished members of the American delegation were Andrew Carnegie, Henry Gassoway Davis, and Cornelius N. Bliss. This Conference created the Commercial Bureau of the American Republics, which was later changed to the International Bureau of the American Republics, and in 1910 became the Pan American Union. The second Conference was held in Mexico City in 1901; the third, in Rio de Janeiro, in 1905; and the fourth, in Buenos Aires, in 1910. A fifth meeting, which was to have been held in Chile in 1914, was postponed on account of the outbreak of the World War. The governing board of the Pan American Union, consisting of the diplomatic representatives of the member countries, has the authority not only to select the place of meeting, but to prepare the program to be discussed.

On June 28, the Illinois constitutional convention, which began its sessions in 1920, passed on third reading a proposed revised state constitution. This will be submitted to popular vote at a special election on December 12. Among the important changes in the proposed constitution are those relating to the election of the legislature, consolidation of courts, home rule for Chicago, and income tax provisions.

The Missouri constitutional convention met on May 15. It consists of two delegates from each of the thirty-four senatorial districts and fifteen delegates elected at large. Numerous amendments to the existing constitution have been proposed and referred to appropriate committees. The convention is authorized to submit a revised constitution or separate amendments. It is probable that the latter plan will be followed.

Several years ago an honorary fraternity for the social sciences was organized at the University of Missouri. In October, 1920, the first chapter of an honorary political science fraternity, bearing the name Pi Sigma Alpha, was established at the University of Texas. Other local chapters have been organized at the Universities of Oklahoma and Kansas, in March, 1922, and the first convention was held at the University of Oklahoma on March 24, 1922, participated in by these three chapters.

The Harris political science prizes, awarded to undergraduates in six middle western states for the best essays on topics drawn from a prescribed list, have been bestowed this year as follows: first prize of

\$150 to Mr. Richard H. Eliel, of the University of Chicago, for an essay entitled "Freedom of Speech during and since the Civil War;" second prize of \$100 to Mr. Burton Y. Berry, of Indiana University, whose essay was entitled "The Influence of Political Platforms on Legislation in Indiana, 1901-1921;" honorable mention to Miss Marjorie Bonney, of the University of Minnesota, for an essay on "Federal Intervention in Labor Disputes," and to Mr. David W. Peck, of Wabash College, for a paper on "Reorganization of State Administration." The subjects listed by the committee for 1923 are as follows:

- (1) American policy in Haiti and the Dominican Republic, or in Central America.
- (2) The Washington Conference for the Limitation of Armaments (or some phase of the Conference).
- (3) Congressional control of national elections.
- (4) Recent variations from the two-party system, such as (a) the third party movement in Canada, (b) the agricultural bloc in Congress, (c) the Non-Partisan League, or (d) coalition government in Great Britain.
- (5) Upper chambers in cabinet-governed countries.
- (6) Comparative analysis of the political leadership of (a) Roosevelt and Wilson, or (b) Lloyd George and Asquith, or (c) Disraeli, Gladstone, and Salisbury.
- (7) State administration and control over local administration in a particular state, with reference to a specific field of government, such as (a) public utilities, (b) finance, (c) health, (d) education.
- (8) Problems of civil service administration (national, state, and local), such as (a) qualification, selection, and tenure of civil service commissioners, (b) organizations of public employees, (c) methods of discipline and removal, or (d) classification.
- (9) Practical workings of the direct primary in a particular state.
- (10) State police systems in the United States.
- (11) Practical workings of county boards in a particular state or county.
- (12) The workings of municipal street railway systems in the United States.
- (13) Status of the British Dominions in international affairs, (a) in general, or (b) with reference to a particular Dominion.
- (14) The Irish Free State.
- (15) Critical study of Soviet government in Russia.
- (16) Political and constitutional developments in Japan since 1867.
- (17) The execution and revision of the treaty of Sèvres (1920).

Inquiries concerning the contest should be addressed to Professor P. Orman Ray, of Northwestern University.

At the last meeting of the American Political Science Association in Pittsburgh a committee was appointed to confer with representatives from other associations in the field of the social sciences on the subject of the teaching of the social studies in high schools. The first conference of what has come to be called the joint commission on the social studies was held in Chicago on May 20 and 21. Representatives of the American Sociological Society, the American Historical Association, the National Council of Geography Teachers, the American Economic Association, the Association of Collegiate Schools of Business, and the American Political Science Association were in attendance. Dean L. C. Marshall, of the School of Commerce and Administration of the University of Chicago, was chosen chairman and Professor W. H. Kiekhofer, of the department of economics at the University of Wisconsin, was designated secretary.

The meeting was entirely harmonious and quickly developed a real enthusiasm. In the course of the discussion it became evident that the problem of the social studies in the high school cannot be solved without reference to work done in the junior high school, and even in the grades. Indeed the seventh grade appears to be the strategic point at which to introduce a general course in social science. Nor is success likely to attend any effort made on the basis of piecing together fragments of the several social sciences. The members of the conference were convinced that they must forget for the time-being their interest in their special fields and approach the problem from the general point of view of social science as a unity.

It was agreed that some general statement of the purpose of the social studies in the schools was necessary as a point of departure. The representatives of each association were instructed to formulate, on the basis of the opinions of a considerable number of experts in their particular fields, a statement of what their science ought to contribute to a course in social studies in the schools. From these, it is hoped, a comprehensive statement of purpose can be formulated.

The relationship of the joint commission to other agencies engaged in similar investigations was discussed and a satisfactory correlation of all activities in the field appears in prospect. Another meeting of the commission will be held during the first half of October.

**The Teaching of Constitutional Law.** In preparation for this paper the writer sent out an informal questionnaire to thirty institutions, large and small, seeking suggestions and information relative to the various aspects of the subject. The answers indicated a surprisingly keen interest in the subject among most of the writers. In the main they were at one in the realization of the existence of a vital problem, in the conviction that there is a real need of an undergraduate course in constitutional law, and in the idea that a combination of text and cases, represented the best methods of approach. As to the place the course should occupy in the curriculum, its relation to other courses, and its scope and content, there was the widest possible variance. On the question of the adequacy of a law school course to meet the needs of political science students, there was a very interesting divergence of views, influenced in many cases by the type of law school course offered in that particular university.

For purposes of discussion it has seemed best to keep the question of teaching constitutional law to graduate students, separate from the problems raised in courses primarily for undergraduates. In dealing with the problem of instruction for graduates the discussion will be confined to the question raised in connection with a general graduate course as distinguished from the problems of specialized study and supervised research that arise in connection with graduate seminars.

Since a large number of universities have a full year course in constitutional law, designed primarily to meet professional needs, attended mainly by professional students, but open to graduate students in the social sciences, the first question that arises is as to the adequacy of such a course in meeting the needs of graduate students. The question of undergraduate students is not raised in connection with this course, because either the course is not open to them, or the legal prerequisites are such as necessarily to bar them.

The great majority of those questioned were of the opinion that a law school course of the type normally given in professional schools is not suitable to the needs of graduate students. Many made their answers depend upon the type of instruction given. The reasons suggested were that in professional instruction the historical, philosophical, and comparative aspects of the subject were ignored, and that attention was concentrated upon the aspects of the field most productive of litigation; whereas many matters of importance to the student of politics are necessarily ignored. In addition there was the objection that professional instruction was too technical, and devoted

too much to the drawing of nice distinctions and not enough to the tracing of fundamental principles in their process of evolution.

In the writer's opinion, most of the reasons given are unsound. Every good law teacher will agree that an able lawyer must not only know the law as it has been expounded by the courts, but he must prepare himself for a much more difficult task, viz., to know how it will be expounded in future cases. The good lawyer must not only be a good legalist, but a legal prophet. He serves clients best who can most accurately forecast the court's disposition of his client's cause. To do this, the law student must not only know the law today but he must also study the law of yesterday, seeking to divine the underlying principles of its development, in order that by extending those same principles into the future, he may forecast the law as it will be tomorrow. Thus the very necessities of professional instruction require a proportionate emphasis upon both historical and philosophical aspects as a means of articulating fundamental principle, and if such is not given, it is due to poor teaching rather than to the professional character of the institution.

The objection based upon the lack of comparative data to be found in law school courses, is generally valid. The value of such an emphasis is much greater to the student of politics than to the student of law, and this is reflected in the type of course generally found in the law school curriculum. This situation can and is largely met in the courses in comparative government. The question may be well asked, if it is not best met in such courses rather than in constitutional law.

The suggestion that a law school course is too technical or pedantic, raises an interesting issue, with which the writer is not in sympathy. In professional teaching much emphasis is placed upon discriminating analysis, nice distinctions, and a searching comparison of the cases. The first purpose is to prepare the lawyers in habits of close and accurate thinking. Surely this is essential to real scholarship, in both politics and law. And if the writer were to venture a criticism of university training in political science, it would be that we have not sufficiently emphasized this very type of mental discipline, and that we might well seek to emulate the work of this kind that is being done in connection with professional instruction.

The real weakness of this objection becomes apparent, however, only when we consider that the criticism was generally made on the assumption that the exhaustive analysis of cases, interfered with the proper emphasis upon the evolution of fundamental legal principles.

To the writer it seems obvious that the accurate formulation and tracing of legal principle, can become possible only after a careful analysis and comparison of decided cases. The criticism has weight then, just to the extent that emphasis upon the mental gymnastics involved in the study and analysis of cases, has prevented due consideration to the problems of underlying principle. This is probably what was in the minds of those who urged the objection. The criticism should then be restated, not as against a proper emphasis upon the close analysis of cases, but as against the tendency on the part of certain teachers to emphasize this aspect, at the cost of adequate attention to underlying principle. It is to be noted that this objection thus becomes valid from a professional standard as well as from an academic one. There is also probably little doubt that this is a mistake less frequently made by the non-professional instructor, than by others. Perhaps what is still more important, law school students will follow with much zeal questions of close analysis and discriminating comparisons, while other students are too eager for the process of generalization without the proper preparation of analysis and comparison.

The final objection to the adequacy of a law school course for graduate students, was that the two groups of students were interested in different portions of the field. There can be little doubt that law school discussion tends to center about the phases of constitutional law most frequently involved in litigation, while the student of government or politics may be equally interested in other aspects of the field. Moreover, by the very nature of his professional interests, the law student is more interested in determining the validity of an existing law, than in the constructive aspects of the subject, viz., how a law may deal with a given subject and do it in a constitutional way. The student of legislation, for example, is interested primarily in the latter, while the law student finds his interest in the former. In other words, the interest of political science seems much broader than the concern of the prospective lawyer, and the same topics may therefore very legitimately receive a different emphasis.

This seems a real inherent difficulty. The writer has had experience in teaching constitutional law to professional, non-professional, and mixed groups, and he believes that here is the real problem. If one is teaching a law school class, with only a handful of graduate students, in spite of all that can be done, the discussion, the emphasis and the interest will be dominated by the professional point of view and where that differs from the interest of the graduate student, he will be the loser.

One may present all the aspects of constitutional law to a law school class, striving to give the emphasis so as to meet the needs of the two groups, but if the class be conducted by the discussion method, the professional interests will dominate and the different interests of the other students will be inadequately met. This is not a criticism of either group or a confession of incompetence on the part of the teacher, but is a mere recognition of the inherent difficulties of the task.

The two outstanding reasons for the inadequacy of the law school course seem then to be, the lack of comparative study and the fact that the two groups were interested, not only in different portions of the field, but also in a different emphasis. It is the writer's belief that the question of comparative constitutional law may be adequately dealt with in the courses on comparative government. Whether the other objections are of sufficient magnitude to justify a separate course for graduate students, will depend upon the condition of the budget, the number of graduate students, and the weight assigned to these particular objections. Some have argued, and with this point of view the writer for the most part agrees, that while the objections are real, there is a certain compensating advantage in having the graduate student come in contact with the intellectual stimulus of professional students who have been specializing in the technique of legal study, where he will get a type of mental discipline, otherwise impossible for him to secure.

We come now to a consideration of an undergraduate course in constitutional law. A few years ago, the writer participated in a discussion of this same subject at Cincinnati, and there the main discussion turned on the desirability of offering any such course in constitutional law. Happily there seems to be little doubt in that matter now. With only one dissenting voter, those who replied to the queries were of the belief that such a course had a definite place in departments of political science. The reasons given for this position, however, were widely different. In fact there were almost as many reasons as there were reasoners.

Obviously no very intelligent discussion of the problems of teaching constitutional law is possible, until we have a working hypothesis as to the need to be met and the purpose to be accomplished. The reasons suggested for offering such a course would seem to fall within one or more of the four following classes:

1. A study of constitutional law as distinct from a descriptive course in comparative government or in American government and politics,



is essential to an adequate comprehension of our governmental system. For example, one's understanding of the fundamental problems of the division of powers between the national and state governments, and the underlying political, economic and social theories that lie back of them, cannot become specific, vivid or profound, until one has followed the development of the commerce clause through judicial decisions and watched the interaction of constitutional principles and the facts of our economic life. Again, the writer has been unable to bring his students to a keen realization of the fundamental need of the continuous adjustment of governmental concepts to modern complicated problems, through any more effective method than the tracing of the doctrine of the constitutional delegation of legislative power to administrative officers. Here they are compelled to face the problem in the light of concrete, specific cases, to the actual necessities of which the principles of law have been applied. Without this method, the student's ideas of such problems are at best nebulous and hazy.

2. A study of constitutional law is essential to the proper understanding of our basic theories as to the reconciliation of private rights with public welfare. The importance of these theories to political thinking can scarcely be denied, and yet it is equally clear that a real understanding of the principles evolved can be secured only through the study of due process of law and its judicial development.

3. The study of constitutional limitations has a great practical value to all students of social science. Many constructive proposals emanating from these sciences necessarily involve legislation or some kind of governmental activity for their practical realization. This means that they may come within the limits of constitutional restraints, and that these restraints become the actual conditions to the legal realization of the ends involved. The unfortunate results that have followed from ignorance of constitutional restraint are too many, varied and obvious to require description.

4. Constitutional law is undoubtedly valuable as a means of mental discipline. Whatever may be the prevailing theory as to the abstract value of mental discipline, there can be no doubt that habits of discriminating analysis and the accurate formulation of general principle are much to be desired; that these are particularly difficult to develop in descriptive courses; and that legal study is peculiarly well adapted to such an end. When that study has such an intimate relation to government and politics as constitutional law, the arguments in its favor, as one of the basic courses, seem overwhelming.

*Scope and Content of the Course.* Some of the suggestions received as to this aspect of the subject showed the most conflicting views. One instructor declared emphatically for a much more comprehensive course than that offered in the law school, and another came out with equal vigor for a more specialized treatment. The majority, however, agreed that the course should be more comprehensive than the law school course, for the reason that the interests of the students of political science are broader than those of the students of law. In this view the writer heartily concurs. On the matter of what aspects of the subject should be emphasized, there were but few replies. Apparently this was considered of little importance, had received little consideration, or was regarded as more or less concluded by the limitations of the available text and case-books. Concrete suggestions as to particular subjects to be stressed were limited to constitutional limitations, separation of powers, division of powers, delegation of legislative powers, and the other constitutional aspects of administrative law. A majority of those reporting on undergraduate courses had outlined the scope of their course largely by Dean Hall's little text on constitutional law and had apparently found that it afforded a satisfactory outline. The writer's experience has been that this was a fairly satisfactory basis except for its inadequate treatment of the delegation of legislative power and the constitutional problems of administrative law.

The lack of definitely formulated ideas on this phase of the subject, and the general tendency towards the same conclusions, with only a few conspicuous exceptions, would seem to indicate that an interchange of views on this subject would be mutually helpful and that to a minimum extent, some degree of standardization might be attained.

*Place of Constitutional Law in the Political Science Curriculum.* Apparently there is little uniformity of ideas or practice in regard to this question which presents some important problems. One distinguished instructor felt very keenly that such a course should be given in the freshman year and required of all students, not only because of the value of the content of the course, but because of its splendid disciplinary value, while another prominent instructor felt there was no place for such a course at all among undergraduates. The majority practice seems to be to open the course to all students above the freshman year, while a considerable number require junior standing, and two or three institutions require senior standing.

Obviously the question cannot be discussed apart from the matter of prerequisites. Here there is about the same divergence of opinion as to the matter just discussed, one school requiring no prerequisites and another requiring fifteen hours of political science. The most common prerequisite is the course in American government and politics, which runs from three to six hours in different institutions, while a number of schools require six hours of government. Closely connected with this question is the matter of requiring constitutional law as a prerequisite for other courses. The writer was much surprised to find that the course was rarely required as a prerequisite to other courses and that there were very few suggestions that it should be. This is doubtless due in large part to the fact that in many institutions constitutional law is looked upon as one of the advanced courses rather than one of the fundamental courses to be taken early in the undergraduate course. One school requires it for all of the courses in the department, two require it for majors in the department, two for all other courses in public law, and two for all advanced courses in government and administration. The writer is firmly of the opinion that the policy followed at Wisconsin, of opening the course to all sophomores and upper classmen who have had the beginning courses in American government and politics, and of requiring it for all courses in legislation, public law, administration, advanced courses in government, and for all majors in the department gives the best results. To give these other courses without a knowledge of constitutional law requires constant and repeated diversions into the field of law, which involve a large waste of time, and give no commensurate results. The writer has frequently seen courses in government, administration and legislation practically diverted from their original purpose, and forced into second-rate courses in constitutional law, because the students were not grounded in that fundamental subject.

Moreover, some system of prerequisites is essential to prevent wasteful duplication. In such courses as administrative law, legislation and taxation, if one must give an adequate treatment to the constitutional aspects of these various questions, a considerable portion of the time must be given to covering the same fundamental points again and again as they come in connection with each separate course. This problem of correlation to avoid wasteful duplication can be solved only by a rational plan of prerequisites.

The objections that will be made to this point of view are that it interferes with registration in the more advanced courses, and that

there are students in political science and allied departments who need some of these advanced courses, but who cannot take them if a prerequisite is required. To these objections the writer can only urge the futility of taking a specialized course for which the preparation has not been adequately made. It is his experience that the great majority of students will be better prepared for the work in hand if they take the required course, rather than the more advanced course, for which it is a prerequisite, provided the system of prerequisites is a rational one based upon a real interrelationship between the courses concerned.

In view of the foregoing it would seem that the question of prerequisites and required courses may be studied and discussed with great profit.

*Method of Instruction.* Here there was greater approach to unanimity than in any other aspect of the subject. With very few exceptions all favored a combination of text books and cases, the underlying reason seeming to be that with this method the less important topics could be covered more quickly with a text book, leaving the more vital matters to be dealt with by the study of cases.

The most significant suggestions dealing with methods of class room instruction had to do with the problem method. Apparently this had not been systematically employed by many instructors but wherever it had been, the reports were uniformly enthusiastic. Here the writer's experience seems to be fairly typical of those who have laid great stress upon the method. At Wisconsin, it is the custom to place in the hands of the students a set of problems. Generally these are close cases which have been decided by the courts, together with such pending constitutional questions as have come to the notice of the instructor, and the constitutional problems that have been raised by the Wisconsin legislative reference library, the municipal reference library, and similar institutions. The problems are arranged in the order of the subject matter of the course, and the students are expected to prepare written opinions, disposing of the cases, in the light of the legal principles developed in the cases, text and discussion.

The advantages of this method are threefold. In the first place, it trains the student in the application of principle to difficult questions of fact, an important matter to every student of government, and yet one that is quite frequently ignored in considering methods of instruction. The mastery of legal science involves two distinct steps, first, the analysis of decided cases and the accurate formulation of under-

lying principle, and second, the correct application of those established principles to new cases. The problem method is essential to any effective training for the latter.

In the second place, by the use of such practical problems the student may be trained to the constructive solution of constitutional problems raised in connection with the drafting of legislation. It is one thing to be able to say that certain proposed legislative measures are unconstitutional. It is frequently a much more difficult task to determine whether or not the same public policy embodied in the proposed statute may be expressed in another statute that will avoid the constitutional defect. To the student of legislation in particular, and to the student of the social sciences in general, this is a very practical and a very important question. For example one instructor submitted a list of problems, some of which were set to illustrate this very point. The student was asked to determine if there was any constitutional method by which the federal government could establish the same public policy represented in the federal child labor law, which the court had held to be void. Another problem asked for suggestions as to how a certain law which the courts had held void, could be so amended as to be valid and at the same time establish as nearly as possible the same public policy as that contemplated in the original act. This type of problem compels the student to canvass the available legislative powers in the light of constitutional restraints, and emphasizes the importance of the question of what can be done rather than what cannot be done.

The third advantage of this problem method is its tremendous pedagogical value. The student finds in the problems, if they are skilfully selected and represent live constitutional issues, a challenge to intellect, scholarship and resourcefulness. The writer has frequently entered the lecture room to find the class in constitutional law gathered in animated groups throughout the room, struggling and contending over the different problems, in a manner that spoke volumes for the interest and enthusiasm that had been aroused. It results in getting students to put in long periods of intensive study on a single question, something which undergraduates are loath to do. But more important still, it means that the student is put to an objective test of correctly stating and applying legal principle to concrete problems. His written opinions on these problems are submitted to the criticism of the instructor and the class, which places a tremendous premium on habits of clear, definite and precise reasoning and expression. Finally it vitalizes the

whole subject and emphasizes the practical every day value of sound scholarship and accurate thinking, for the subject is presented in terms of modern problems of pressing moment.

Ways and means of best utilizing the problem method of legal instruction should receive the full discussion that its inherent importance would seem to justify.

*Emphasis upon the Constructive Formulation of Underlying Principle.* While this subject has already received some attention, it was only incidental and not commensurate with its inherent importance. Upon this subject, there were practically no suggestions, and the writer must here depend upon his own ideas and experience. This is a subject that has been too frequently ignored, or only superficially covered. This is particularly true with regard to such vague and indefinite provisions as due process of law. Much that has been said by writers and by the courts has been of literary rather than of scientific value. Yet the great significance of the concept of due process will hardly be denied. It is around its development and application that there is being fought out the age long struggle between private right and governmental power. It is being fought with all the power, the brains, and the skill that are always involved where both great material and human interest are at stake. The underlying principles that are resulting are the more significant because of the manner of their evolution. They are not being evolved out of a speculative or metaphysical endeavor to solve the problem, but by a tedious process of proceeding from concrete case to concrete case, step by step, always forced to face practical, real situations, by the constant necessity for the definite solution of the concrete cases submitted for judicial decision.

Here we have a very earnest effort to contribute to the solution of a very important problem. What have been the results of these efforts? Have they contributed anything to our political philosophy? Have they given us any intelligible principles or standards? Back of the judicial rhetoric, the hastily written decisions, the mass of dicta, is there anything articulate, fundamental, or profound? Are there any definite, inherent tendencies that are consciously or unconsciously followed in the development of judicial doctrines? These are problems deserving of greater emphasis and keener study than they generally receive. These would involve the psychology and the technique of judicial decision. They would involve the relation of public opinion to judicial doctrine. They would involve a more careful study of the

outstanding contribution of Mr. Justice Brandeis to the subject of due process, made in his famous brief on the eight hour day, when he secured the judicial recognition of the fact that due process cases involve both principles of law and questions of social facts, and that while they are mutually interdependent for the purposes of judicial decision, they are entirely severable as to the methods of their solution. While the solution of one requires the technique of legal analysis and synthesis, the other question is one of objective evidence and expert investigation. The writer is of the firm belief that much of the judicial confusion is due to a failure to discriminate between the two kinds of questions involved, and the foolish attempt to solve technical questions of fact by the maxims of legal science.

Certainly here is a group of problems for the student of political science. These particular problems may be better suited to graduate than to undergraduate courses; nevertheless, any adequate undergraduate course should raise the questions and stimulate an interest in their study and discussion, for they are fundamental to the understanding of American government. How can such questions be best discussed? How far can such discussions be profitably carried on in undergraduate courses? Upon these and related questions further study and discussion is earnestly invited.

ARNOLD BENNETT HALL.

*University of Wisconsin.*

## DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

### IN PREPARATION AT AMERICAN UNIVERSITIES<sup>1</sup>

#### AMERICAN GOVERNMENT AND PUBLIC LAW

- Barth, Harry A.*, A Revision of the Expending System of the State of Pennsylvania, with a consideration of State Budgetary Procedure and State Accountability. University of Pennsylvania.
- Field, Oliver P.*, "Political Questions" in American Constitutional Law. University of Minnesota.
- Gaus, John M.*, Employment Policies of the Federal and State Governments. Harvard University.
- Gosnell, A. F.*, Thomas C. Platt, Political Manager. University of Chicago.
- Hanford, A. C.*, Problems of Reconstruction in State and Local Government by Constitutional Amendment. Harvard University.
- Harris, J. P.*, An Analysis of Systems of Registration in the United States. University of Chicago.
- Hayes, Fred E.*, The Military Power in Relation to Civil Authority during the Civil War. University of Illinois.
- Honeywell, R. J.*, Executive Relations to the United States Senate. Harvard University.
- Ketcham, Earle H.*, History and Interpretation of the Sixteenth Amendment. University of Illinois.
- Lambie, M. B.*, Some Aspects of the Merit System. Harvard University.
- Lancaster, Lane W.*, State Supervision of Municipal Finance. University of Pennsylvania.
- Law, J. Thaddeus*, Delegation of Legislative Power to Administrative Bodies. University of Wisconsin.
- Macdonald, Austin F.*, Federal Subsidies to the States. University of Pennsylvania.
- Mason, A. T.*, The Application of the Sherman and Clayton Acts with reference to Organized Labor. Princeton University.
- Mellon, H. G.*, The Jurisdiction of the Court of Claims. American University.
- McGuire, P. S.*, The Genesis of the Interstate Commerce Commission. Cornell University.
- Morganston, Charles E.*, The Appointing Power of the President. American University.

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<sup>1</sup> This list is supplementary to the list printed in the *American Political Science Review*, XIV, 155-158. For earlier lists see the *Review* as follows: IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914).



- Mott, Rodney L.*, Origin and Development of the Concept of Due Process of Law. University of Wisconsin.
- Richardson, D.*, Constitutional Doctrines of Mr. Justice O. W. Holmes. Johns Hopkins University.
- Richardson, Rupert N.*, The Development of State Constitutional Limitations on Legislatures. University of Texas.
- Robinson, G. C.*, Executive Influence on Federal Legislation. Harvard University.
- Schumacher, Waldo*, The Operation of the Direct Primary in Wisconsin. University of Wisconsin.
- Scott, J. F.*, The Evolution of Party Organization in California. University of California.
- Short, Lloyd M.*, The Development of National Administrative Organization in the United States, University of Illinois.
- Shoup, E. L.*, The Vice-Presidency of the United States. Harvard University.
- Sikes, E. R.*, Federal and State Corrupt Practices Acts. Cornell University.
- Wells R. H.*, The Veto Power of the Governor in the American States. Harvard University.
- White, Howard*, Determination of Military Policy in the United States. University of Illinois.
- White, Paul L.*, The Sources of De Tocqueville's "Democracy in America." Yale University.
- Williams, Bruce*, The Sub-Legal Rights and Obligations of States. Johns Hopkins University.
- Wriston, H. M.*, Special Agents in American Diplomacy. Harvard University.

#### LOCAL GOVERNMENT

- Hoyt, Josephine*, The Berkeley Police System. University of California.
- Kingsbury, J. B.*, The Development of Personnel Administration in Chicago, 1895-1915. University of Chicago.
- McClintock, Miller*, Traffic Problems in American Cities. Harvard University.
- Taylor, R. E.*, Municipal Budget Making. University of Chicago.

#### POLITICAL THEORY

- Chase, E. P.*, The Constitutional Position and Political Theory of the Non-Jurors. Harvard University.
- Hart, Clyde*, Political Ideas in American Literature. University of Chicago.
- Malone, Dumas*, The Public Life and Writings of Thomas Cooper. Yale University.
- O'Neill, Anne W.*, The Political Theory of Francis Lieber. University of California.
- Spykman, N. J.*, The Social Theory of George Simmel. University of California.
- Tillema, John A.*, The Influence of the Law of Nature on United States Government and Law. University of Illinois.

#### FOREIGN AND COMPARATIVE GOVERNMENT

- Nakano, T.*, The Ordinance Power of the Japanese Emperor. Johns Hopkins University.

- Mims, Edwin*, The Conflict of Landed and Industrial Interests in the British Parliament following the Reform Bill. Yale University.  
*Willis, Frances E.*, The Belgian Parliament. Leland Stanford Jr. University.

## INTERNATIONAL LAW AND INTERNATIONAL AFFAIRS

- Buell, R. L.*, The Washington Conference and its Background. Princeton University.  
*Donahue, James L.*, The Shantung Question. American University.  
*Fell, E. T.*, Recent Problems in Admiralty Jurisdiction. Johns Hopkins University.  
*Godshall, W. Leon*, China's International Relations respecting Shantung. University of Pennsylvania.  
*Lasswell, H. D.*, Formation of Certain International Attitudes. University of Chicago.  
*Lynskey, Elizabeth*, The Influence of Political Parties on the Foreign Policy of the United States. University of Minnesota.  
*Manson, Fletcher S.*, Liberia in its International Relations. University of Pennsylvania

## BOOK REVIEWS

EDITED BY A. C. HANFORD

*Harvard University*

*Public Opinion.* By WALTER LIPPMANN. (New York: Harcourt, Brace and Company. 1922. Pp. x, 427.)

Graham Wallas began the preface to his very significant book, *The Great Society*, as follows: "Dear Walter Lippmann, This book develops the material of that discussion-course (Government 31) which you joined during my stay at Harvard in the spring of 1910." And he concluded: "I send it to you in the hope that it may be of some help when you write that sequel to your *Preface to Politics* for which all your friends are looking."

Shortly thereafter Lippmann's *Drift and Mastery* appeared, a sequel undoubtedly and an admirable book, but not exactly that sequel which Wallas had in mind. Then came the war with its diversion of men of letters into new and strange activities. Presently Lippmann found himself an officer in the military intelligence service, with the opportunity of a life-time to put his political theories to the test. While the Bolsheviks were bombarding the German home-defences with the latest opinions "made in Russia," he was helping to drench the front-line trenches with the best of American-made opinion. He had become in truth a manufacturer of opinion, distributing his product with the stolid zeal of one who controls the market for a well-advertised brand of soap or chewing-gum. "Those who can, do; those who can not, teach." Lippmann could, and did. But unlike many doers, Lippmann can tell how he does it. Hence his present book, *Public Opinion*, the true sequel, for which Wallas and his other friends have confidently waited, to the early *Preface to Politics*.

Lippmann has followed through the lead which Wallas originally opened up in his *Human Nature in Politics*. Unlike the general run of *post-bellum* volumes by late combatants, his is not a record of experiences but an analysis of ideas, illumined doubtless, as readers of his preliminary essay, *Liberty and the News*, will have anticipated, by his war experiences but founded upon his earlier studies in political science.

For Lippmann is a Platonist. He begins with a reference to Plato's theory of ideas. He closes with an endorsement of Plato's plea for a government of philosopher-kings. The modern philosopher-king, however, is to be no superswordsman, like Plato's selected guardians, but a kind of superstatistician.

Many modern Platonists seem to misunderstand the other great fountain of political theory, Aristotle. Lippmann quotes Aristotle only once, and then he quotes Aristotle's defence of slavery only to condemn it. But it is possible to understand Aristotle's defence of slavery, not as a feeble attempt to justify the then existing institution, but as a radical attack upon it. For Aristotle justifies the enslavement only of those whom nature has designed for slavery, and it is clear that he did not deem these identical with the actual slaves of his time. So today the existing wage system can be justified, if at all, only upon the Aristotelian logic. But the critic must not disparage the work of the Platonist on the ground that he is not an Aristotelian. Lippmann's is a true masterpiece. It will give much aid and comfort to all teachers of political science, and there will be no fairer test of the quality of their instruction than to ascertain whether their pupils find the reading of it a pleasurable and a profitable exercise.

The author's concern is primarily with the sources and process of formulating public opinion rather than with its content or manner of expression. If space permitted it would be interesting to compare his definition and treatment with earlier discussions by Bryce, Dicey and Lowell, and the more recent work of A. B. Hall on *Popular Government*. Bryce and Lowell are quoted, but there is no reference to Dicey.

A. N. HOLCOMBE.

*Harvard University.*

*The Conduct of American Foreign Relations.* By JOHN MABRY MATHEWS. (New York: The Century Company. 1922. Pp. xi, 353.)

Foreign relations have so long been a subject for historical treatment that this volume by Professor Mathews breaks new ground. The purpose of the work is to consider the foreign relations of the United States from the standpoint of political science. A great number of topics have been arranged with sound judgment and discussed in an interesting manner. One should not be disappointed if he does not find the finished style that marks the volumes of Trescott or the fullness

of treatment which John Bassett Moore bestows upon the fundamental problems of American diplomacy in his most recent book. Neither is necessary to the achievement of Professor Mathews' purpose.

The really important chapters outline the governmental organization for the conduct of foreign affairs, set forth the problems of diplomatic intercourse, and consider from the standpoint of constitutional law as well as political practice the various phases of the treaty-making power. Diplomatic events furnish illustrations of the principles under discussion. There is always a danger of repetition in the topical treatment of numerous subjects, a fault from which the book is not wholly free.

The dictum of Jefferson that "the transaction of business with foreign nations is executive altogether" is transformed in this volume into a conclusion that the presidential office is fundamentally and intrinsically better adapted than a legislative body for the control of foreign relations. But the author suggests that "it may, however, be not only a necessity of practical politics, but also a moral duty of the President, so far to coöperate with the other branch of the treaty-making power as to consult with the Senate, or at least to take into his confidence influential members of the foreign relations committee, during the course of important negotiations" (p. 151). The debate between Senator Bacon and Senator Spooner in 1906, in which the former contended that the rights of the Senate extend to all stages of a treaty negotiation, while the latter insisted that these rights were restricted to the stage between the affixing of signatures to a treaty and its ratification, is correctly estimated as involving no necessary conflict between what were once thought opposing views (p. 138). Legal control by the Senate can be exercised only in the final stages incidental to ratification. The position of Senator Bacon can mean only that the Senate is free to proffer advice to the President at any stage in the negotiation of a treaty. But anyone can do this. It is the fact that such advice proceeds from the body which will subsequently be called upon to ratify the action of the President that gives it weight.

The volume is well documented and shows painstaking investigation. It will not only be helpful to the reader who desires to find the specific principles which determine the course of governmental action in the conduct of foreign affairs, but will prove of value in connection with college courses in diplomacy and international relations.

WILLIAM S. CARPENTER.

*Princeton University.*

*The History and Nature of International Relations.* Edited by EDMUND A. WALSH. (New York: The Macmillan Company. 1922. Pp. xvi, 299.)

The contents of this volume may be divided into four parts. There are two papers dealing with the development of international organization in the past—one on international organization and practice in antiquity, by Professor Rostovzeff of Wisconsin, formerly of the University of Petrograd; and one on mediaeval diplomacy, by Professor C. J. H. Hayes. There are four papers on the structure and methods of international governmental relations in our own time, including two papers by Dr. James Brown Scott and Professor John Bassett Moore. These six papers constitute two-thirds of the whole book. There follow a paper on the content of international economic relations by Professor Laughlin and three papers on the content of international political relations—Latin-America, the Far East, the United States—by Drs. Rowe, Reinsch, and Borchard. The last three papers occupy about one-third of the volume, the essay on economic relations being very short, not, presumably, because there was some desire to neglect the economic foundations of international relations, as one irate economist seems recently to have supposed, but because the students in the School of Foreign Service at Georgetown, where these papers were originally read, have a full training in international economic relations as a part of their regular work.

It is, of course, no reflection upon any of the authors of these various papers to point out that, to the average reader, certain of them are of much greater value than others, or, rather, that just at the present time it is especially desirable to have published such papers as those dealing with the methods of international government which are available for settling the various economic and political controversies arising among the nations. Granted the existence of the latter, and irrespective of their exact content at any one time or in any particular case, what we need is a study of the machinery and procedure necessary for their regulation and control. Hence the value of the six papers first mentioned.

It is to be hoped that such propagandist utterances as those in the third and fourth paragraphs of the preface and in the appendix will not be too common in subsequent numbers of the Georgetown Foreign Service Series.

PITMAN B. POTTER.

*University of Wisconsin.*

*The Influence of the Sea on the Political History of Japan.* By VICE ADMIRAL G. A. BALLARD, C. B. (New York: E. P. Dutton and Company. 1921. Pp. xix, 311.)

*Sea-Power in the Pacific, a Study of the American-Japanese Naval Problem.* By HECTOR C. BYWATER. (Boston and New York: Houghton Mifflin Company. 1921. Pp. ix, 334.)

"Lord Palmerston once remarked that whenever he had particularly difficult negotiations to undertake with foreigners he preferred to employ a naval officer," says Vice Admiral Ballard, retired, of the British navy, when dealing with President Fillmore's selection of Commodore Perry for the mission to Japan (p. 80). Certain it is that naval officers have often proved capable of achieving diplomatic results in practice, and since Mahan's works no one can question their equal capacity to have a theoretical understanding of the roots of diplomatic prestige. In writing they are apt to ignore the forms and technicalities of diplomacy delighted in by international lawyers and professional diplomats but generally they have a firm grasp of reality. Both observations apply to the present author.

Vice Admiral Ballard offers the history of Japan as affected by naval power from Kubla Khan through the Russo-Japanese War. We peruse episodes such as the prompt beheading of Kubla's envoys to Japan, Hideyoshi's six year effort to conquer China, the martyring of a quarter of a million Catholicly Christianized Japanese at command of Iyemitsu with the aid of the Protestant Dutch, and the "good humor" with which the Satsuma clan paid an indemnity after destruction of their city by the British navy and asked whether they might not purchase a war vessel in England, and arise with renewed belief in Darwin's dictum: "*Natura non saltum.*" Japan did not jump from nothing to world power in fifty years. The same heroic and determined people, the same willingness to undertake aggressive war against vastly superior forces, the same adroitness in profiting by defeat and imitating the excellencies of the enemy are evident in the thirteenth and in the nineteenth centuries. "Japan," says the author, "has been potentially a great power from a date antecedent to the political creation of most of the states composing modern Europe" (p. 3). That her strength remained in abeyance was due, in his opinion, to her failure to appreciate the importance of a navy for an insular nation.

The style sometimes lacks ease, and details of naval strategy occasionally become too prolonged for the comfort of the lay reader, but

the book contains, for the present-day student of world affairs, much that is little known and worth knowing. The writer's admiration for the Japanese character and sympathy for her policies may be taken exception to by some readers. He approves of the annexation of Korea (p. 284), believes the Anglo-Japanese alliance has kept peace in the Pacific and prevented the exploitation of China (p. 289), and endorses the Japanese claim to a Monroe Doctrine of the East (p. 294).

Mr. Bywater has approached the Japanese question from a strategic rather than a historical standpoint. His book is a *livre d'occasion*, but a good one. It contains the immediate background of the Washington Conference both as to armaments and the Far East. The reviewer can testify that it was thoroughly read by many of those influential in the councils of that gathering.

Bywater is an expert on naval strategy and imparts his wisdom in language for the layman. He shows the vulnerability of Guam and the Philippines in a Pacific war, and brings home to the reader the importance of bases near to the scene of action. Perhaps he would not go so far as Ballard, who says that with the present distribution and equipment of naval bases Japan is invulnerable with a fleet one-third that of any enemy, but his comments give ground for speculation upon the effect of the 5-5-3 ratio. There is a good brief account of present controversies between the United States and Japan and an extended analysis of the strength of the two navies. The book is supplied with maps and charts illustrating strategic factors in the Pacific and the relative size of navies. Though some of the facts have been rendered obsolete by the Washington treaties, and a number of the chapters are too technical for the general reader, the book has much of interest for the student of current world problems.

QUINCY WRIGHT.

*University of Minnesota.*

*An American Diplomat in China.* By PAUL S. REINSCH. (Garden City, N. Y.: Doubleday, Page and Company. 1922. Pp. xii, 396.)

*China at the Conference, A Report.* By WESTEL W. WILLOUGHBY. (Baltimore: Johns Hopkins Press. 1922. Pp. xvi, 419.)

In many respects these two books, though differing greatly in character and style, complement each other; the former contains a lively account of the incubation period of some of the most important Chino-



Japanese problems, the latter a record of the steps leading up to their final solution at the Washington Conference and elsewhere.

Both books reflect a friendly attitude towards China. Dr. Reinsch's pages are full of good feeling not only for the members of Chinese officialdom with whom he associated at Peking, but for the swarming native population "with its good-natured consideration of the other fellow, its constant movement, its excited chatter and its actual moments of heated but bloodless combat" (p. 22). Professor Willoughby's attitude toward the Chinese is reflected clearly in his statement (p. 18) that "the chief political problem which the Conference was called to solve was to find means of placing a restraint upon the imperialistic aims of Japan."

The student familiar with MacMurray's compilation, especially the second volume, and Willoughby's *Foreign Rights and Interests in China* will find in these two books much supplementary material. So much was accomplished at the Washington Conference that Willoughby's *Report* is essential to an understanding of the existing situation in the Far East.

The real value of Dr. Reinsch's new book lies in the record which it preserves of events and people in Peking during the war years 1914-1919. Its weakness, if it is possible to attribute weakness to so fascinating a book, arises from the fact that it is a diary which has been published too soon after the events to permit of everything being said. For example, when Dr. Reinsch takes up the Shantung question he prints from his diary only a few pages designed to display the excitement in Peking as the result of the encroachment of the Japanese. None of the other factors essential to an understanding of that Japanese move are mentioned. During the years Dr. Reinsch was American minister in Peking, a number of events of first-rate importance occurred and his book refers to them all. In addition to the seizure of Shantung he discusses the Twenty-One Demands, exchange of the Ishii-Lansing notes, China's entrance into the World War, and in strictly domestic affairs, the fall of Yuan Shi-Kai, the secession of the Canton government, and the adventure of Tuan Chui Jui.

Professor Willoughby's *China at the Conference* is much more than a report. It contains at least two chapters (II and XXIV) which embody important generalizations on the Far Eastern situation. The other chapters of the book present not only a complete program of the work of the conference insofar as it related to China and Siberia, but also a description of its organization and procedure. The appendices contain

the texts of the treaties and resolutions that refer to China, and of the treaty between China and Japan in settlement of the Shantung question. Coming from such a highly equipped student of the Far East and so competent an organizer of materials, the *Report* leaves nothing to be desired in the arrangement and presentation of the subject.

W. W. McLAREN.

*Williams College.*

*A Revision of the Treaty.* By JOHN MAYNARD KEYNES. (New York: Harcourt, Brace and Company. 1922. Pp. viii, 242.)

*What Next in Europe.* By FRANK A. VANDERLIP. (New York: Harcourt, Brace and Company. 1922. Pp. x, 308.)

Up to a point, the authors of these two books view the European situation alike. Both regard the peace treaties as ill-advised, unenforceable, and ruinous. Mr. Keynes, whose opinions were widely exhibited in the volume to which his present book is a sequel, rails against the agreements and their makers in a manner in which the more restrained Mr. Vanderlip does not indulge; yet even the latter, in a chapter title, calls the treaties "poisonous." Both writers consider that Europe can never be placed upon its feet economically under the present terms. Both say that there must be revision.

Beyond this, however, there is considerable divergence. Mr. Keynes feels the iniquity of the treaties so keenly that he can talk about little else, save plans for drastic revisions. He considers that his earlier attacks upon the instruments' economic clauses, particularly the reparations sections, have been proved entirely justified. He feels that the atmosphere of make-believe in which Europe has been living during the past two years can no longer be maintained. And he finds the remedy for practically all existing ills in a rewriting of the treaties, almost from A to Z. Mr. Vanderlip, on the other hand, criticises the treaties only incidentally. He regards them as in a number of respects unfortunate, but he would not, at this late day, press for their revision except as it is absolutely necessary in order to permit a workable plan of financial and commercial reconstruction to be carried out; and in this connection he brings forward again his well-known plan for employing the Allied debts as a general European reconstruction fund, and also his scheme for a European federal reserve bank.

Mr. Keynes' book presents the keener analysis of the particular problems of reparations, indemnities, and cancellation of inter-allied

debts; Mr. Vanderlip's volume has wider sweep, is vastly more philosophical, and will contribute more to a balanced view of the world situation as affected by Europe's troubles, and to a wholesome attitude of thinking men, especially Americans, toward international politics generally.

FREDERIC A. OGG.

*University of Wisconsin.*

*Stein and the Era of Reform in Prussia, 1807-1815.* By GUY STANTON FORD. (Princeton University Press. 1922. Pp. vii, 336.)

Since the era of Frederick the Great, Germany has produced two great statesmen. All others in comparison are pigmies. These are Baron vom Stein and Bismarck. Any perspective of the modern history of Germany must focus about the careers of these two men. Both were statesmen of the first rank, though the basic principles of their statesmanship were poles apart. Bismarckian statesmanship determined the course of German policy from the fall of Metternich to the fall of William II, for the "dropping of the pilot" in 1890 in no wise meant the abandonment of his principles or his policy. Under the last of the Hohenzollerns the technique and tactics of German politics were different, but the principles which underlay German statecraft continued to be those of the iron chancellor. The cataclysmic frustration of Bismarckian statesmanship involves a reaction toward the ideals and principles of the statesmanship of Stein. Professor Ford's study has, therefore, a distinct timeliness.

The circumstances surrounding the most important phase of Stein's work are indeed similar to those which confront German statesmanship today. Prussia had been thoroughly vanquished by Napoleon at the battle of Jena. Humiliated and disillusioned, her ruler, for a time, was willing to take counsel of the one great man of brains and character, instead of hearkening to the flattering voices of the crowd of cheap politicians who incontinently crowded around the steps of the throne. Stein was no flatterer. He had been previously dismissed from the ministry as "a refractory, insolent, obstinate and disobedient official." But it was to him that Frederick William III turned again in his hour of deepest distress. Short though this second ministry was, it was then that the foundations of modern Germany were laid—the foundations indeed, for the superstructure was to be built by other

hands and in a far different fashion from what Stein would have wished. Stein's is the story of far-visioned statesmanship, permitted to accomplish a few great and masterful reforms, to design the broad lines of a wise and progressive policy, and then repudiated.

Professor Ford's volume is no mere re-hash of the great *Life and Times of Stein* by Seeley, which now for more than a generation has illuminated this period of German history for English and American students. A great deal of new material has been unearthed since Seeley's work was done, of which Professor Ford takes full account. Especially worthy of mention is his critical analysis of the condition of the Prussian peasantry before 1807, in which he reveals a quite different picture than that which we had previously accepted. The work was largely completed before the war, which explains the lack of frequent reference to contemporary events. But the events and facts of that crucial epoch of 1807-1815 speak for themselves and the thoughtful reader can make the application to the situation of today. Professor Ford has written a scholarly and authoritative treatise on a period which was the turning-point in the history of modern Germany, and on a man who was the almost perfect incarnation of true statesmanship.

WALTER JAMES SHEPARD.

*Ohio State University.*

*Introduction to American Government.* By FREDERIC A. OGG and P. ORMAN RAY. (New York: The Century Company. 1922. Pp. viii, 841.)

This volume by two writers of established reputation is designed for use in introductory college courses in government and covers the entire field of American government, national, state and local. In order, however, that the student may have a body of fundamental principles with which to understand and appreciate more fully the form, purpose and workings of American government, Part I (pp. 3-81) of the book is devoted to a study of "the nature of government in general, and of the state as an institution shaped by human experiences in widely separated lands and ages." With this end in view, there are brief chapters on the nature and origins of the state, state functions and relations, the basis and kinds of government, the distribution of governmental powers, and the position of the individual in relation to the state. Although this portion of the work covers less than one hundred pages and therefore does not go much below the surface, its inclusion by way of introduction

constitutes one of the most original features of the work. Many students enrolled in beginning courses in political science do not continue further into the subject, and if they do not obtain an idea of some of these larger, more fundamental concepts of government in such courses the opportunity is lost.

Having outlined something of the nature and objects of government in general, the authors devote the second part of the book (pp. 83-223) to five preliminary subjects relating to the foundations of constitutional government in the United States, namely: (1) English and colonial origins; (2) the formation of the Federal Constitution; (3) the relation between the states and the central government; (4) the citizen, his rights and privileges and (5) the various ways in which the Federal Constitution has developed so as to adapt itself to changing ideas and needs. Perhaps the best chapter in this part of the work is that on "The States," which explains concisely the constitutional position of the states with allusions and references to the more important Supreme Court decisions.

With the necessary background thus established in the first two hundred pages or so of the volume, the remainder is given over to the more detailed study of the various units of government, Part III (pp. 225-544) being devoted to the national government, Part IV (pp. 545-713) to state government, and Part V (pp. 715-809) to local government, including both urban and rural. Political parties are touched upon in both Parts III and IV; the history of parties is set forth in the former, the party machinery and the various reform movements in the latter. These sections of the book on the structure and functions of American government are admirably put together, and while the limitations of space and purpose give little opportunity for originality or speculation, they contain a mass of accurate, interesting and vitally important information which has been carefully analyzed and clearly presented.

Defects and failures of existing political institutions are dwelt upon fully, not merely for the sake of criticism but in order to direct the mind of the student along "forward-looking and constructive lines," because in practically every instance suggestions for improvement are offered. Of particular interest and timeliness are the chapters on the cabinet, civil service and the departments at Washington, in which the authors discuss the need for an improved policy of personnel administration, especially in relation to advancement and compensation, and outline the services rendered by the various departments. There is a

good brief account of the movement for the reorganization of state administration, an interesting description of the personnel of typical state legislatures, and a concise and informing chapter on the party system in the states, while the chapter on the reconstruction of county government is one of the best short accounts of the principal faults and the proposals for improving county government. One cannot help but wish, however, that the authors had found space to devote more attention to several matters of importance which are given only brief attention or considered incidentally, such as judicial control over administration, the effect of the grant-in-aid system upon the position of the states and the functions of state administration.

Taking the book as a whole its conspicuous features are its accuracy, comprehensiveness, incisiveness in the presentation of facts and conclusions, and the clear and readable style in which it is written. The chief shortcoming is the fact that the authors have attempted to cover so much ground that there has been little opportunity for the development of important ideas, but this could not have been accomplished without spreading the material over two volumes. In this work Professors Ogg and Ray have given college teachers an excellent text book and have set a high standard for the other volumes in the *Century Political Science Series* of which this is one of the first to appear.

A. C. HANFORD.

*Harvard University.*

*War Powers of the Executive in the United States.* By CLARENCE A. BERDAHL. (Urbana, Ill.: University of Illinois *Studies in the Social Sciences*, Vol. IX, Nos. 1 and 2. 1921. Pp. xvi, 296.)

The general tendency of Mr. Berdahl's thesis seems to be to invest the President in war time, in his capacity as Commander-in-Chief, with the powers of a military dictator. Thus on page 111, he regards with much complacency the prospect of another President imitating Lincoln's action at the opening of the Civil War in raising an army without previous authorization by Congress, should he consider the emergency "serious enough;" while on page 192, the same President's action in suspending the privilege of the writ of *habeas corpus* and in ordering arbitrary arrests is held, in the language of Professor Burgess, to be "a precedent of the Constitution," and to warrant the deduction, stated in the language of Professor Dunning, "that the President may in an emergency exercise the right to arrest and detain individuals until

Congress acts." And not less startling is the view advanced on pages 185 and 186, that the President is vested "impliedly by the rules of international law" "with full power to restrict and control the conduct and movements" of alien enemies within the United States, "as he sees fit," and that the laws of Congress dealing with the same subject are quite gratuitous. The power thus claimed for the President is called his "police powers" (p. 183); and elsewhere we learn (p. 197), again on the authority of Professor Burgess, that by virtue of this power, the First Amendment "may be suspended—when in the judgment of the President the public safety demands it."

If we test these propositions by the intention of the framers of the Constitution, we are at least safe in saying that they did not intend to bestow upon the President a greater sweep of prerogative than belonged to George III, who certainly would never have ventured to suspend *habeas corpus* on his own motion. If, again, we test it by the doctrine of the Supreme Court, we find it contradictory of *ex-parte* Milligan (4 Wall. 2), which not only treats constitutional limitations as designed for war no less than for peace, but defines the President's power as Commander-in-Chief simply as one of military command. Finally, if we test it by what occurred in the late war, we find that while President Wilson exercised vastly greater powers than did President Lincoln, so far as these powers touched the ordinary rights of the people of the United States, they all were powers which were authorized by Congress. In short, the substantive powers of war belong to Congress; and the President's power, while invested with a certain range of discretion which Congress may not constitutionally curtail, is in its own nature a merely instrumental power. In the very act of declaring war, Congress habitually "directs" the President to use the army and navy to make its declaration effective.

On the recently mooted question of how war may be terminated, Mr. Berdahl arrives at the conclusion (p. 232) that "a treaty of peace is the only method by which a foreign war may be terminated by the United States." The objection that the other party to the war may have been subjugated and there be nobody to make a treaty with, is met by the apparently serious suggestion that a war of conquest would be unconstitutional, as if, forsooth, none of our wars had been attended by conquest! Nor will Mr. Berdahl admit the soundness of the proposition that Congress, by repealing its authorization of hostilities—which might seem to be what is meant by "war" in the constitutional sense—could restore peace. "Congress," he says, "does not have an absolute

power of repeal . . . . for example, states are admitted to the Union by means of an enabling act . . . . but no state can be deprived of its place in the Union by a subsequent repeal . . . . of that earlier act of admission." Naturally not, since once a state is admitted it becomes a creature of the Constitution; but can it be said that once a war is declared it becomes a creature of the Constitution? Certainly, if the United States can terminate a condition of war only by formal treaty of peace, it lacks an almost universal attribute of sovereignty in the field of foreign relations (see *Law Quarterly Review*, Jan., 1922, pp. 26ff.), a defect, however, of which apparently neither President Harding nor the present Congress is aware. For on July 2, 1921, the President approved a joint resolution declaring the state of war which had existed between the United States and Germany since April 6, 1917, at an end; and in his recent proclamation the President dates peace with Germany not from the ratification of the treaty of peace with that country, but from July 2.

Mr. Berdahl's work has decided merits. He sometimes overvalues controversial opinions and builds too ambitiously on the precarious foundations they afford; he sometimes makes too sweeping statements; but his volume is well written, well arranged, contains a store of valuable information, and displays wide research. It is perhaps the more valuable for the challenge it throws down on the important topic with which it deals.

EDWARD S. CORWIN.

*Princeton University.*

*Budget Making: A Handbook on the Forms and Procedure of Budget Making with Special Reference to States.* By ARTHUR EUGENE BUCK. (New York: D. Appleton and Company. 1921. Pp. ix, 234.)

The author of *Budget Making* has rendered a distinct service to governments and to citizens, for in this book he has provided a practical, comprehensive, and interesting manual of budget making. Sensing the growing need for such a manual, the author has admirably filled a big gap in the literature of budgets. *Budget Making* is not a compilation of what others have written; on the contrary, it is the product of one who has had long and varied experience in budget matters, and who throughout his first-hand contact with practical problems of public finance has had his eyes open and his ear to the ground.



As the sub-title indicates, emphasis is placed very largely on state budgets. However, as the budgetary problems of states differ but slightly from those of municipalities and other governments, and as the treatment of the problems and mechanics of budget making is so full and broad-gauged, the book is really a guide to budget making for governments of all sizes and types.

*Budget Making* is addressed more particularly to legislators, public officials, and students of government; the plain, every-day citizen will find it none the less highly informative and thought-provoking. Those who glibly talk of budgets and budget systems, or who look upon them as panaceas for the ills of the day, ought to be required to read this book, or have it read to them. Perhaps they would find that budgets are not produced by pious wishes alone, but that each budget is "only a link in the ever lengthening chain of the government's financial experience," and that "effective budget-making procedure constitutes a complete cycle of operations" and continues throughout the year.

One is at a loss to decide which of the twelve chapters of the book is the most significant, for each makes important contributions to the well-rounded picture. The subject is dealt with in a broad, inclusive manner. Sound fiscal policies and correct accounting practices are emphasized; the technique, mechanics, and procedure of budget making are explained in considerable detail; each essential step from beginning to end is taken up in order, discussed, and evaluated. In addition, model forms are shown and explained, and a great deal of information regarding existing budget systems is included.

Mr. Buck's book is intended to be a practical manual of budget making, and such it is. It is so practical and so helpful that it seems destined to exert from now on a most powerful and beneficent influence on budget procedure. This volume has set a high standard for the series of handbooks, issued by the National Institute of Public Administration, of which it is the first to appear.

ROBERT J. PATTERSON.

*Bureau of Municipal Research of Philadelphia.*

*Principles of Government Accounting and Reporting.* By FRANCIS OAKEY. C.P.A. (New York: D. Appleton and Company. 1921. Pp. xxvii, 563.)

This volume was published by the Institute of Government Research, Washington, D. C., as one of the series of books on *Principles of Adminis-*

*tration.* The institute, under the able leadership of its director, W. F. Willoughby, has taken up the task of making a careful study of "each of the more important branches of public administration . . . with a view to making known those principles and practices the employment of which . . . will lead to efficiency and economy in the conduct of public affairs."

Dr. Willoughby rightly places accounting and reporting among the most important technical problems of public administration. To accomplish the desired end of promoting more efficient and economical administration through accounting and reporting, it was realized that the work must reach the government, administrators and legislators, and the intelligent public. For the production of such a work, at the same time both scientific and practical, Mr. Francis Oakey is unusually well prepared through his wide experience with the accounting problems in national, state and municipal government.

Accounting and reporting are merged by the author into a single science. Accounting he defines as "the science of producing promptly and presenting clearly the facts relating to financial condition and operations that are required as a basis of management." "The prime function of accounting," he maintains "is the clear and prompt presentation of all the facts that are essential to good judgment and effective action." Accordingly accounting is treated as a means of reporting or furnishing to the interested governmental official information essential for effective administration.

The kind of information needed by the various classes of officials—operating executives, controlling executives, legislative bodies—and the public are presented in the introductory chapter. The definition, significance, application and operation of "funds" and "funding" in financial administration furnish the subject-matter for four chapters. Among the other important subjects discussed are the balance sheet, receipts, expenditures, fixed property, stores, funded debt, sinking funds, current assets, current liabilities and private funds. The book closes with a brief chapter on "The Budget as a Report."

Each of the subjects presented is viewed in its relation to the entire subject of financial administration. In fact the book might be termed a handbook on financial administration, since the author presents rules for correct financial procedure in fields distinctly outside of accounting and reporting taken in the narrower sense.

Comparatively little attention is paid by the author to the form and content of annual financial reports intended to interest and inform the

public. A satisfactory discussion of that subject is yet to be written. The list of contents (pp. xiii-xxi), furnishes a valuable topical analysis of the book. The index however is far from adequate.

The author has produced the best work so far written on the subject, and has made a valuable contribution in the fields of public administration and public finance.

ORREN C. HORMELL.

*Bowdoin College.*

*Principles of Public Personnel Administration.* By ARTHUR W. PROCTER. (New York: D. Appleton and Company. 1921. Pp. xi, 244.)

*The Federal Service. A Study of the System of Personnel Administration of the United States Government.* By LEWIS MAYERS. (New York: D. Appleton and Company. 1922. Pp. xvi, 607.)

During the last decade some twenty cities, six states and the national government have analyzed their problems of public employment in an effort to establish conditions that will attract and retain a competent personnel in the civil service. This series of surveys, identified by salary standardization or reclassification reports, has provided an experience which has not been presented heretofore in book form. It is Mr. Procter's opportunity not only to record this experience, but also to consolidate the gains and make them available for general information.

His volume, published for the Institute of Government Research in the series on *Principles of Administration*, applies equally to municipal, state and the national governments. Beginning with a brief summary of conditions leading to the Civil Service Reform Act of 1883, it emphasizes the need for supplementing this legislation by a more positive program relating to adequate salaries, employment standards, scientific recruiting methods, training, advancement and promotion, rating and control of individual efficiency, employees representation and superannuation. Comments upon these factors constitute the contents. One chapter in particular relates to the legal status and functions of a civil service commission, and another, the author's most constructive contribution, to methods of conducting a standardization inquiry. Appendices include a list of cities and states having civil service commissions, the model civil service law for state governments drafted by the National Civil Service Reform League, and a brief bibliography.

Emphasis is placed upon factors in the technique of personnel management. Except for comments upon the functions of a civil service commission, there is very little consideration of the equally important problem of allocating responsibility for administering these factors. This latter is a difficult task which is perplexing our governments in their attempt to distribute the control over personnel matters among the department heads, the budget bureau, the civil service commission, and other staff agencies, such for instance as the bureau of efficiency in the national government. Mr. Procter's wide experience in budget and civil service surveys also qualifies him to present this phase of the personnel problem. It would have been interesting if he could have paid more attention to it.

The book will be instructive to all students of public administration but particularly to government officials and civic agencies desiring an authoritative record of methods and tendencies in the management of our civil service.

While portraying in great detail the subjects of appointment, promotion, tenure, classification of positions, salaries and employees' organizations in the federal government, Mr. Mayers has demonstrated the magnitude of the task confronting any person who has the courage to analyze these factors in our civil service. But this volume—the most recent in the series of *Studies in Administration* of the Institute for Government Research—is more than a demonstration of magnitude. It is the best presentation of the problem of entrance, promotion and traditions of the service that has been published. Mr. Mayers has made a contribution which could only be made after painstaking and penetrating research by a person having unusual experience and clear insight into governmental operations.

The volume incidentally deals with the history of the law of selection and tenure. But fortunately there is a departure from the treatises on nepotism, favoritism, and political influence which have so characterized civil service literature that uninformed citizens are apt to identify the civil service problem with "spoils" and then dismiss the subject without further consideration. Mr. Mayers does devote considerable space to the elimination of politics from the civil service. This he must do, for as he writes "The political problem is purely a negative one . . . . Not until this problem has been substantially solved can the positive and technical problems of personnel administration, or indeed of administration generally, be successfully attacked."

There are two parts. The first considers the elimination, whenever desirable, of political influence from the civil service and discusses in this connection the source of the appointing power, the relation of Congress and the President in respect to appointments, the laws of 1871 and 1883, with considerable attention to the extension and operation of the present classified service and "formal systems of selection." The second part deals with the technical problems of personnel administration, assuming that the undesirable political influence has been eliminated from the service. In this part the subjects are promotion versus recruitment, reassignment and promotion, recruiting methods, the maintenance of efficiency, working conditions, organization for administration, and employees' organizations.

Readers will be impressed with the intimate knowledge that the author has of the subjects and particularly with the first-hand information of conditions in the executive departments. Judgments and conclusions are tempered by this intimacy. Some of the references to the English service need revision owing to the recent changes in English practices, but in a world of rapid change it would be impossible to record matter and expect it to remain, even over night, without noting the necessity for alterations in the morning.

MORRIS B. LAMBIE.

*University of Minnesota.*

#### BRIEFER NOTICES

Professor O. D. Skelton's *Life and Letters of Sir Wilfrid Laurier* (2 vols., Oxford University Press) is one of the most interesting and significant among political biographies. The public career of this statesman coincided with important developments in the British colonial system and Laurier's relation to these developments was in most cases intimate. As a young lawyer in a country town Sir Wilfrid entered politics fifty years ago. His progress was not rapid at the outset, but in 1887 he became leader of the Liberal party. Nine years later he became prime minister, a post which he held until overthrown on the reciprocity issue in 1911. His biography might well be termed "A Half Century of Canadian Politics," for there were no events in this field and epoch which failed to command his interest and activity. Professor Skelton has made the most of his theme, dealing with it in a broad and scholarly way. He has not overloaded his volumes with extracts from speeches, letters and state papers. The narration is clear and interesting, never apologetic in tone, not always strictly

impartial, but disclosing an endeavor to be fair in all things. Some men are fortunate in their careers but unfortunate in their biographers. Sir Wilfrid Laurier was fortunate in both. He took some risk in selecting, as his literary executor, a scholar who was neither of his own race or faith; but the outcome has abundantly justified the wisdom of his choice.

*My Memories of Eighty Years*, by Chauncey M. Depew (Scribner's, pp. 417) is an entertaining collection of reminiscences and anecdotes about the great and the near-great told in a rambling and conversational manner by one who has had a long and successful career in business and politics. Among other things Mr. Depew has written intimate accounts of all the presidents of the United States from Lincoln down to Roosevelt, has told about important national campaigns and his experiences in the United States Senate; and has done considerable philosophizing about government and politics along with the lighter parts of the work. In speaking of the "widening chasm between the Executive and the Congress" he writes that "the Cabinet should have seats on the floor of the Houses, and authority to answer questions and participate in debates. Unless our system was radically changed, we could not adopt the English plan of selecting the members of the Cabinet entirely from the Senate and the House. But we could have an administration always in close touch with the Congress if the Cabinet members were in attendance when matters affecting their several departments were under discussion and action."

*Ten years at the Court of St. James'*, by Baron von Eckardstein (translated and edited by Professor George Young, E. P. Dutton and Company, pp. 255), is full of diplomatic revelations by one who admired Bismarck, was charmed by King Edward and disapproved of Kaiser Wilhelm and all his doings. For the general reader the diplomatic snapshots of important personages and the many personal stories are good gossip and have all the charm thereof; while for the student of political science these rather unique reminiscences throw a new light on pre-war politics and diplomacy. Of special interest is the account of those fateful years when Lord Salisbury, Mr. Chamberlain, the Duke of Devonshire and others were trying to bring about an Anglo-German alliance that would perhaps have prevented the recent war. In von Eckardstein's opinion, failure was due not to any fault of these British statesmen but, in the words of Professor Young, the translator, "to the waywardness of the Kaiser, the weakness of his Chancellors, and the tortuosities of Holstein."

*The Memoirs of the Crown Prince of Germany* (Scribner's, pp. 374) are a mixture of interesting observations, lamentations and excuses. The lamentations are dull, the excuses are more interesting and many of them are convincing. Especially enlightening are the accounts of his militaristic relations with his father; emphasis is placed upon his efforts to refute the legends which have placed upon him the chief responsibility for the débâcle at Verdun. Important events and situations are graphically described, and there are vivid portrayals of such famous personages as Bismarck, King Edward, Czar Nicholas, Bethmann-Hollweg, von Hindenburg and others. The Crown Prince attributes the collapse of the German army largely to the dissensions at home and to the breakdown in the morale of the German people. Assuming that the Crown Prince wrote all of the memoirs himself, a point on which there has been considerable discussion, he is more intelligent than we have given him credit for being. It is unfortunate that the publishers do not reveal the name of the translator.

*Our Navy at War*, by Josephus Daniels, former secretary of the navy (George H. Doran Company, pp. 390) is a vivid and interesting account of the efforts of the American Navy and the Marine Corps in the World War. The author has drawn his material partly from official records, partly from his own wide experience as the civilian head of the naval forces and partly from the experiences narrated by naval officers. The result is the most complete and readable popular account yet written concerning the service rendered by the navy in the great crusade. Of special interest are the chapters which tell how the navy was mobilized upon almost a moment's notice in the spring of 1917, how the marines helped stop the drive on Paris, the work of the naval overseas transportation service, the development of the naval reserve, and the little known activities of the navy after the close of hostilities in the enforcement of the terms of the armistice and relief work in such places as the Adriatic, Constantinople and Russia, and finally the hazardous task of sweeping up the mines planted in the North Sea.

The Harvard University Press has published a *Manual of Collections of Treaties and of Collections Relating to Treaties* (pp. xlvii, 685) by Denys P. Myers, which should prove invaluable to students of international law. As indicated by the title the aim is to present for ready reference a complete bibliography of all collections of treaties and works relating to treaties of every state down to the outbreak of the

World War. In order to make the volume "internationally serviceable" the preface, table of contents, index and certain other parts are in both English and French. The material is presented in four sections; the first containing references to general collections of treaties, the second containing references to collections by states, the third collections by subject matter, and the fourth references to treaties on international administration. In order to afford the reader a general view of the subject, notes on the history of the publication of treaties have been brought together in narrative form in the appendix.

A small volume on *Secret Diplomacy: How Far Can It Be Eliminated?*, by Paul S. Reinsch (Harcourt, Brace and Company, pp. v, 231), contains much illustrative material on the subject with which it deals, much ripe wisdom, much practical counsel. After a review of diplomatic practice in the last two centuries, with special attention to the diplomacy of 1900-1920, certain general conclusions are drawn for reconstructive work in the future. The author steers a true course between the insanity of the red critic of orthodox diplomacy and the complacency of the professional diplomat. If rather general and inconclusive in tone, that is because the student can, in this matter, only indicate sound principles and hope that those in power—the people and their official representatives—will act upon them.

Raúl de Cárdenas in his book *La Política de los Estados Unidos en el Continente Americano* (pp. 281), published by the Sociedad Editorial Cuba Contemporánea, has made a careful study of the growth of American territory and influence. The book is divided into three parts, first a history of American territorial expansion, second a discussion of the development and significance of the Monroe Doctrine, and last a study of American "Preponderance in the Caribbean." In this last section the author criticizes severely the policy of the United States in Haiti and San Domingo, but he calls these exceptions and does not believe that the majority of Americans know what is going on. Himself a Cuban, Sr. Cárdenas is grateful for all that the United States has done for his country and is full of praise for its altruistic attitude.

*Japan's Pacific Policy*, by K. K. Kawakami (E. P. Dutton and Company, pp. xiv, 380), is primarily an account of the part taken by Japan at the Washington Conference but it also contains a careful analysis of the problems of that country due to her geographical situa-



tion and political necessities. The authors' conclusion is that Japan although not "the sole or even chief, sinner among the Powers . . . has gone home from the Washington Conference on probation," and that the endurance of the good impression made upon the public opinion of the world will depend upon her future actions. There is an appendix of some one hundred pages presenting practically all the important documents on Japan, China and the Pacific submitted to, or adopted by, the Washington Conference.

*Japanese-American Relations*, by Iichiro Tokutomi (translated by Sukesbige Yanagiwara, Macmillan Company, pp. 207), is the attempt of one of Japan's leading publicists to give an unbiased account of Japanese-American relations. It is not for an American to judge whether or not he has succeeded. Another recent book dealing with a similar subject is *The Real Japanese Question*, by K. K. Kawakami (Macmillan Company, pp. xiii, 269). In this book the author confines himself almost entirely to a discussion of the anti-Japanese policy of the Pacific states and presents statistics and arguments to refute the ideas of those who maintain that there is a "Japanese menace."

The veteran journalist, Charles Edward Russell, has written an entertaining and instructive book entitled *The Outlook for the Philippines* (Century Company, pp. 411). The early history of the islands and their occupation by the United States are traced and there are a number of chapters devoted to the peoples, their resources and to the industrial, educational, religious, social and political phases of life there. The author attempts to present both sides of the independence question, but in the end comes out rather emphatically in favor of immediate independence. The only doubt in his mind is whether the Filipino leaders have sufficiently considered the economic consequences of cutting adrift from the United States. There is a good index and an appendix containing statistical and other data.

*Asia at the Cross Roads*, by F. Alexander Powell (Century Company, pp. 369), is an excellent book for one who wishes to get an elementary idea of social and political conditions in the Far East. The problems of China and Japan are discussed clearly and impartially, but when it comes to the Philippines, the author turns advocate and pleads for the non-independence of the islands. Although royally entertained by Governor Harrison and given every opportunity to see the suitability of independence, his extensive and intensive visit and observations lead Mr. Powell to the opposite conclusion from that of Mr. Russell.

Leo Pasvolsky, in *Russia in the Far East* (Macmillan Company, pp. ix, 181), traces and condemns the aggressively imperialistic policy of both the Czarist and the Bolshevist régimes in the Orient. His account of recent events in Mongolia is interesting, and his statements and conclusions are supported by appendices containing translations of official documents. The narrative leads up to the Washington Conference, and an appeal is made for the United States to assume the "moral trusteeship" of true Russian national interests.

Messrs. E. P. Dutton and Company have published a book entitled *Lenin* by M. A. Landau-Aldanov (translated from the French; pp. ix, 241). The author, "a Socialist after Jaures," studies in this small volume two things: a very strong and very curious personality and the idea of a Communist revolution in social philosophy. His verdict on Lenin's personality is absolutely opposed to those who think the Bolshevik leader capable of learning from experience the error of his Communist ways. He finds three initial sources for Lenin's ideas: Marx, Bakunin, and Sorel.

*Serbia and Europe, 1914-1920*, compiled by Dr. L. Marcovitch (Macmillan Company, pp. xv, 355), is a collection of articles published in the journal *La Serbie* between 1916 and 1919. A number of writers have collaborated in furnishing material for this volume, but most of the articles have been written by Dr. Marcovitch. Starting with the assumption that Europe has not understood Serbian affairs, the book is intended to set forth the policy of that country during the war as conceived by Serbian publicists and politicians. Having revealed the purpose and aspirations of the country both before and after 1914, which are described as the fixed determination to resist German aims at all costs, chapters are devoted to the struggle with Austria-Hungary; Serbo-Bulgarian relations, which are described with feelings of decided animosity; relations with Italy, Russia, Roumania and Greece; and most important of all the realization of national ideals through the formation of the independent kingdom of the Serbs, Croats and Slovenes.

*Europe of Today*, by J. F. Unstead (Moffat, Yard and Company, pp. viii, 248), is an explanation of the physical geography of each of the larger sections of Europe together with a brief survey of the social, economic and political problems of each. Especial attention is given to central and eastern Europe where the World War has caused the

greatest changes. The maps and diagrams, which are few in number, are intended not to supersede but to supplement an atlas which the author assumes will be used in connection with the book.

The first volume of *A Short History of the British Commonwealth*, by Ramsay Muir (World Book Company, pp. 824), covers an immense amount of ground. It begins with the earliest peoples of the British Isles and stops just before the American Revolution. It gives a brief account of English history, political and constitutional, and does not neglect the social and economic aspects of the development of the country. The histories of Ireland, Scotland and Wales are sketched and pictures of their social life at different stages in their growth are quite fully given. Nor are the colonies omitted. America, the West Indies and India are all given ample treatment. The book is exceedingly readable, one reason being that the author likes to write about the individuals of history and does not confine himself to laws and conditions of the people as a whole.

*British History in the Nineteenth Century (1782-1901)*, by George Macaulay Trevelyan (Longmans, Green and Company, pp. 445), is a brilliant study of the period. The first chapters give a series of vivid pictures of the state of society in England before the Industrial Revolution. From there on the author carries his theme of continuous growth resulting from economic, social and political changes. But it would not be true to Trevelyan's style without portraits of the men who led these changes, and these he has given us in abundance.

*Democracy and the British Empire*, by F. J. C. Hearnshaw (Macmillan Company, pp. xi, 205), contains several lectures delivered recently by the author at the Universities of Sheffield, Edinburgh and London. In these lectures Professor Hearnshaw traces briefly the development of democracy, first in the British Isles and secondly in the self-governing dominions, and explains why there is nothing incompatible between representative government and British imperialism. The concluding section of the book deals with the menace of "direct action" both to democracy and empire. "Labour—genuine labour," says the author, "is destined to rule both Britain and the dominions. But the only manner in which it can rule them is the old, well-tried, slowly developed method of constitutional government."

Two of the latest booklets in the *World of Today Series*, edited by Victor Gollancz (Oxford University Press), are *Whitehall* (pp. 78) by C. Delisle Burns, and *The Exchequer* (pp. 71) by R. G. Hawtrey. The former describes the offices of the central government in England, the functions performed by the civil service and the position of the service in the life of the English people; while the latter book deals with the parliamentary and administrative side of the English financial system.

*France and England: Their Relations in the Middle Ages and Now*, by T. F. Tout, University of Manchester, Historical Series, No. XL, pp. 168), would be a splendid book if the "*and Now*" had been left out of the title. The relations between the two countries in the Middle Ages are discussed in a scholarly and thoroughly interesting manner, and the author has brought out many points of contact that have not always been appreciated. But except for a few allusions here and there the author does not get as far as the Renaissance, much less to the present day. The title rather than the subject matter should be changed.

Students of history are greatly indebted to Professor J. B. Botsford for editing the manuscript of his father, the late G. W. Botsford, so as to make possible the publication of *Hellenic History* which has just been brought out by the Macmillan Company (pp. 520). The work is planned primarily as a text for college courses, and its purpose is to present in brief scope the evolution of Greek civilization with particular emphasis upon those phases of Greek life which have influenced to a marked degree the civilization of today. Those interested in political science will find much valuable material in such chapters as "The Evolution of the City State," "Imperialism," "Athenian Democracy," "Society and Public Works," "Social Aspects of the State" and "The Organization and Administration of the Hellenistic States."

*The Legacy of Greece*, edited by R. W. Livingstone (Oxford University Press, pp. xii, 424), aims to give some idea of what the world owes to Greece and what it can still learn from her. Of interest to students of politics are the sections on history and political thought by Arnold Toynbee and A. E. Zimmern, respectively. Professor Zimmern is of the opinion that the most enduring thought which Greek political thinkers leave with us is that "public affairs . . . so far from being a tiresome preoccupation or a 'dirty business' are one of the

great permanent interests of the race: if they were not too trivial or too debasing for great artists like Thucydides and Plato, we need not fear lest they be too trivial or debasing for ourselves."

*The Origin of Tyranny* (Cambridge University Press, pp. 374), by P. N. Ure, is an extremely interesting and well-written discussion of the earlier Greek tyrants, including also Rome, Lydia and the Saite dynasty of Egypt, with especially careful utilization of the archaeological evidence. The author shows that the source of the tyrant's power in the earlier period was primarily financial and commercial; this is true for the Peisistratids also. They do not *per se* represent a democratic reaction against the nobility. The later conception of the tyrants in Plato and Aristotle is anachronistic, being derived primarily from the Syracusan despots of their day.

Bruce Smith, for nineteen years a member of the Australian House of Representatives, has written a sane and searching account of the purposes and possibilities of popular government in a volume entitled *The Truisms of Statecraft* (Longmans, Green and Company, pp. xiv, 255). Great stress is laid upon the necessity of drilling into the usually provincial legislator's mind an understanding of human affairs and the history of various peoples, and an attempt is made to lay down a body of general principles as a guide to practical legislators concerning the wisdom or unwisdom of this or that particular kind of legislation. One does not have to read very far to discover that Mr. Smith's political creed is one opposed to the present socialistic tendencies of his own and other governments.

Recent publications by the University of Toronto Press include: *Canadian Constitutional Studies*, (pp. 163), the Marfleet lectures delivered at the university in 1921, by Sir Robert Laird Borden, former prime minister of Canada, presenting a general sketch of Canadian constitutional development from 1863 to the present time; and *Idealism in National Character* (pp. 216), some half dozen lectures delivered by Sir Robert Falconer, president of the university, which give interesting discussions of the importance of education in the development of of national character, Canadian universities and the war, and the evolution of British imperial policy.

An address delivered by Chief Justice William Howard Taft before the students at the University of Rochester has been printed in a small

booklet entitled *Liberty Under Law* (Yale University Press, pp. 51). With a keenness of analysis and clearness of style so characteristic of all his writings, Justice Taft sets forth in brief space his interpretation of the principles of American constitutional government and warns against indifference to the enforcement of law.

Professor Stephen Leacock has revised and enlarged his *Elements of Political Science* (Houghton Mifflin Company, pp. xiii, 415) which appeared first in 1906. Facts in this new edition are brought down to 1921, and the effects of the World War, the reconstruction of Europe and the League of Nations are set forth. Various matters such as proportional representation, the initiative and referendum, and direct nomination which have developed rapidly since the previous edition are enlarged upon and additional references to recent books and articles have been included at the end of each chapter.

*Triumphant Plutocracy*, by R. F. Pettigrew, formerly United States senator from South Dakota (Academy Press, pp. 145), is a tirade against the generally accepted order of things which has for its thesis the idea that "the whole structure of our government from the Constitution onward" has "been framed by business men to further business ends," that the laws have been "passed by the legislatures and interpreted by the courts with this end in view," and that the execution of these laws has "been placed in the hands of executives known to be safe and that these things were more true of the national than they were of the local and state political machinery." One of the radical remedies proposed by the author is to abolish the inferior United States courts, which would leave the Supreme Court without the power to declare laws of Congress unconstitutional.

*Revolution from 1789 to 1906* is a collection of documents selected and edited with notes and introductions by R. W. Postgate published by Houghton Mifflin Company (pp. 400). Mr. Postgate believes the age-long revolution is leading to socialism (p. 13), and selects his documents and writes his notes and introductions from this point of view. It is somewhat astonishing to note that only 50 of his 400 pages, those on the Russian revolution of 1905, deal with the period since the Parisian Commune. Even such important documents in the history of the European Socialist movement as the Gotha and Erfurt programs of the German party are not included. Most of the work is devoted

to the French Revolution of 1789, the Revolutionary British Working Class, 1832-1854, to the Revolutions of 1848, the Commune and the Russian Revolution. Throughout, Mr. Postgate is particularly concerned with the communist and socialist phases of the revolutions and with the separation of "the proletarian" from "the bourgeois." He gives 1848 as the end of bourgeois revolution on the Continent and 1832 in England (p. viii). Although the book is far from a complete collection of the leading documents of European socialism it will prove convenient and useful to all students of the subject.

In *The Revolt against Civilization* (Scribner's, pp. 274), Lothrop Stoddard has given an account of certain present day conditions which is even more alarming than his *Rising Tide of Color* and *the New World of Islam*. In these earlier books, Mr. Stoddard saw much to disturb him in the questions of the colored races and in the new forces that were stirring the Mohammedan world. In *The Revolt against Civilization* it is the so-called "under-man" and the menace of revolution which strike at the roots of organized society. While the author has undoubtedly painted a scene somewhat darker than it actually is, the reader will find much food for thought in this book.

The Extension Division of the University of North Carolina has issued a useful bulletin on *The League of Nations* (vol. I. no. 8, pp. 67) containing a brief of arguments for and against the entrance of the United States into the League, a text of the covenant, a bibliography and a number of carefully selected affirmative and negative references. This Division has also published a bulletin on *Farm Tenancy and its Relation to the Church*, by L. G. Wilson (Vol. I, no. 11, pp. 28).

In his Dartmouth Alumni Lectures, *Towards the Great Peace* (Marshall Jones Company, pp. vi, 264), Mr. Ralph Adams Cram develops the idea that at present the world is in a period of declining civilization, and suggests means by which the rise of a greater civilization may be hastened.

*Washington and the Riddle of Peace*, by H. G. Wells (Macmillan Company, pp. 312), tells us how the conference at Washington made Mr. Wells feel and what ideas that important assembly suggested to his fertile brain.

*Our Eleven Billion Dollars* by Robert Mountsier (Thomas Seltzer, pp. 149) is a concise and non-technical summary of the facts and figures concerning Europe's debt to the United States. The author is not in favor of the cancellation of this debt except a small part which is owed by such countries as Armenia, Czecho-Slovakia, Poland, etc. His chief proposal is for a world economic conference to be held in Washington which could by means of discussion and study at least initiate "the program of economic reorganization that will eventually win this post-war by providing a hopeful basis for immediate action and the adjustment of more equitable relations between consumer and producer, labor and capital, and among nations, large and small, old and new."

The Christopher Publishing House has recently published a book entitled *The American Spirit in the Writings of Americans of Foreign Birth*, compiled and edited by Robert E. Stauffer (pp. 185). This volume contains selections setting forth the essence of Americanism as found in the writings of certain eminent Americans of foreign birth or extraction such as Francis Lieber, Carl Schurz, Jacob Riis, Edward Bok, Edwin L. Godkin, Oscar Straus, Otto Kahn, and others of lesser importance. Another book published by the same house is *Graded Lessons in English for Italians* by Angelo Di Domenica (pp. xiv, 282). Both books should be helpful to those engaged in Americanization work.

*Why Europe Leaves Home*, by Kenneth L. Roberts, the well-known newspaper correspondent (Bobbs-Merrill Company, pp. 356), is a popular account explaining the recent migration of the peoples of Europe, especially why so many immigrants from Central and South-eastern Europe have been moving to America, what this means to the United States, why and how the Russians of the old régime fled to Paris, Warsaw and Constantinople and their struggle for existence, and the return of Constantine to Greece.

*The Immigrant Press and its Control* (Harper and Brothers, pp. xix, 487), by Robert E. Park, is a systematic and unbiased study of foreign-language newspapers in the United States. The author presents both the grave dangers and the decided merits of the foreign-language press with particular reference to the Americanization movement. He is opposed to any radical proposals for regulation such as those for taxing or penalizing immigrant publications but finds the best lever of control through coöperation and alliance.



Jerome Dowd, Professor of Sociology at the University of Oklahoma, has set forth his observations and interpretation of American life and institutions in a small volume entitled *Democracy in America* (The Harlow Publishing Company, pp. xiii, 506). The book is made up largely of quotations from various writers such as Bryce, DeTocqueville, Münterberg and Dickens with comments by the author.

Professor Thomas H. Reed, of the University of California, has written an elementary text entitled *Loyal Citizenship* (World Book Company, pp. viii, 333), the purpose of which is to give the pupil first the "necessary minimum of knowledge of the institutions and principles of government and society. . . . and, second, to inculcate the habit of civic-mindedness not merely by example and precept but by practice as well." In order to accomplish the latter purpose there is a list of "civic activities" at the end of each chapter suggesting inquiries and first-hand studies that can be made by the student in his own community.

Among the recent monographs in the *Columbia University Studies in History, Economics and Public Law*, are: the first volume of a political history entitled *William Shirley, Governor of Massachusetts, 1741-1756*, by George Arthur Wood, Assistant Professor of History at Ohio State University (vol. xcii, no. 209, pp. 433); *The Whig Party in Pennsylvania*, by Henry R. Mueller, Professor of History at Muhlenberg College (vol. ci, no. 2, pp. 271); *Japan's Financial Relations with the United States*, by Gyoju Odate (vol. xcvi, no. 2, pp. 136); *Some French Contemporary Opinions of the Russian Revolution of 1905*, by E. Alzona (vol. c, no. 2, pp. 117); and *The Peaceable Americans of 1860-1861*, a study in public opinion by Mary Scrugham (vol. xcvi, no. 3, pp. 125).

William Parr Capes, secretary of the New York conference of mayors and director of the New York state bureau of municipal information has set forth his observations and conclusions on municipal government in a volume entitled *The Modern City and its Government* (E. P. Dutton and Company, pp. xv, 269). He discusses the essentials of good government, how to make both municipal officials and citizenship efficient, city charters, the federal, commission and commission-manager types of government, the control and management of city school systems, standards of judging the efficiency of government and the future cost

of municipal government. In making this survey Mr. Capes has not confined himself to any one section of the country nor to any particular class of cities but has given special consideration to a score of towns and cities both east and west and varying in size and complexity of problems from New York City to Wilmette, Illinois, and Alhambra, California. For fifteen of these municipalities there are large-sized charts illustrating the different forms of government which should prove helpful to students of city problems.

The Thomas Y. Crowell Company has published two small books on city government by Charles M. Fassett, now lecturer at the University of Kansas and formerly mayor of Spokane. One of these, entitled a *Handbook of Municipal Government* (pp. 192), presents in simple form the essential facts concerning the development and structure of city government and some of the more important administrative functions of cities. As explained by the author his purpose is not to give an exhaustive treatment of the subject nor to rival the more complete texts which are available, but merely to condense the material into a handy and readable volume without sacrifice of essentials. This aim the author has accomplished. The second book, entitled *Assets of the Ideal City* (pp. 177), deals with the activities and undertakings which are essential to modern life in cities. Although there is little that is new or original in either of these volumes they are of especial interest as the products of a man who has made a success as the mayor of a large city and who has recently turned his efforts in the direction of presenting the results of his experiences and study to a wider public.

*The History of Public Poor Relief in Massachusetts, 1620-1920* (Houghton Mifflin Company) by Robert W. Kelso, former commissioner of the department of public welfare in Massachusetts, is an intensive and informing study of the English origins, American beginnings and the development of the system of public charities in that state from the days of the Plymouth Colony to the present time. Considerable attention is given to the evolution of the law of settlement, and to the work of the state department of public welfare, including the so-called Massachusetts system of child-guardianship. Mr. Kelso believes that so far as possible the detailed administration of public poor relief should be left to the local units of government, reserving to the state chiefly the determination of general policies, in other words a plan of centralized policy and decentralized administration.

The Macmillan Company has published a very practical book on *The Rural Community*, by Llewellyn McGarr (pp. xv, 239). There are useful chapters on the characteristics of rural communities, their contrast with urban districts, the survey and its adaptation to the rural community, and the importance of the country school. This small work should prove a useful guide to those interested in country life improvement.

Among the more important recent elementary texts for use in high schools are *New Era Civics* by John B. Howe (Iroquois Publishing Company, pp. vii, 420); *Problems of American Democracy*, by Henry Reed Burch and S. Howard Patterson (Macmillan Company, pp. x, 601); *Problems in American Democracy*, by Thames R. Williamson (D. C. Heath and Company, pp. xv, 567); *Community Life and Civic Problems*, by Howard C. Hill (Ginn and Company); and *A History of the United States*, by Wilbur Fiske Gordy (Scribner's, pp. xiv, 600). Charles Edgar Finch has written a book entitled *Everyday Civics* (American Book Company, pp. ix, 326), which is designed to meet the needs of students from twelve to fifteen years of age.

John H. Vaughan, Professor of History and Economics at the New Mexico College of Agricultural and Mechanic Arts has published a text book on the *History and Government of New Mexico* (published by author, pp. 373), which is intended for use in the public schools.

The Library of Congress has issued its annual *List of American Doctoral Dissertations Presented in 1920*, prepared by Mary Wilson MacNair (Government Printing Office, pp. 170).

## RECENT PUBLICATIONS OF POLITICAL INTEREST

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CLARENCE A. BERDAHL

*University of Illinois*

#### AMERICAN GOVERNMENT AND PUBLIC LAW

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## ORIGIN OF THE SYSTEM OF MANDATES UNDER THE LEAGUE OF NATIONS

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The present arrangements for the government of the colonial territories taken from Germany and Turkey in the World War, arrangements which may collectively be described as the system of mandates under the League of Nations, may work well or they may work badly. They may persist into an indefinite future, they may come to an abrupt termination and leave nothing of their own kind in their place, or, most probable of all, they may be progressively modified in one way or another with the passage of time and changes of circumstances. But, whatever happens hereafter, the present system is now an accomplished fact, and will necessarily be taken as the basis for any action in the future. The apparent inclination of at least one great power to insist upon all its rights in former German and Turkish territories now under mandate to other powers, and the firmness of the latter in defending their position under the mandate system, indicate, further, that the present system has already created rights, interests, and claims on one side and another which will call for constant consideration and regulation as time goes on. There seems to be ample reason, therefore, for making an effort to discover and understand the origin of the mandate system, and

its nature and purpose as it was established in the years 1919–1920. Moreover, in the course of the investigation there will be revealed most of the influences which contributed to produce the League Covenant as a whole; the mandate system affords an easily isolated sample of the whole process of international reorganization in these years.

It is a common impression that the provisions of the Covenant of the League of Nations relating to mandates<sup>1</sup> are to be found there as a result of the ideas, policies, and efforts of President Wilson. It is also known that General Smuts played some part in creating the mandate system. Just what part each played may be discovered from a review of the way in which this portion of the Covenant was drafted.

There was a common agreement among the allied and associated powers as they gathered in Paris in December and January, 1918–1919, that the colonies and territories taken from Germany and Turkey in the course of the war should not be returned to those powers. There remained the task of deciding upon their future disposition apart from their former masters. Most, if not all, of these territories and colonies were, or at least were felt to be, incapable of assuming the rôle of independent states in their own names and in reliance upon their own strength. On the other hand, to divide them among the victorious powers would look bad in view of what had been said about the iniquity of conquest and the rights of peoples to live their own lives, and so on; further, an attempt to divide the spoils would provide too great an opportunity for dissensions among the Allies themselves. Nothing remained but international control—in some form and to some degree, as should seem best.

This situation had already occurred to various persons as they contemplated the possible settlement. It had led General Smuts,—who might or might not have favored a policy of annexation if that had been possible,<sup>2</sup>—to devise a plan of settlement

<sup>1</sup> Covenant of the League of Nations, Article XXII.

<sup>2</sup> See assertion that he favored a policy of annexation in Scott, A. P., *Introduction to the Peace Treaties*, Chicago, 1920, p. 68; it will also be noted later that

which may best be stated in his own words as these are found in a booklet entitled *The League of Nations: A Practical Suggestion*, which he published on December 16, 1918:<sup>3</sup>

"As a programme for the forthcoming peace conference I would therefore begin by making . . . certain . . . recommendations:

" . . . .  
 "(2) That so far at any rate as the peoples and territories formerly belonging to Russia, Austria-Hungary and Turkey are concerned, the league of nations should be considered as the reversionary in the most general sense and as clothed with the right of ultimate disposal in accordance with certain fundamental principles. Reversion to the league of nations should be substituted for any policy of national annexation.

" . . . .  
 "(3) These principles are: firstly, that there shall be no annexation of any of these territories to any of the victorious Powers, and secondly, that in the future government of these territories and peoples the rule of self-determination, or the consent of the governed to their form of government, shall be fairly and reasonably applied.

" . . . .  
 "(4) That any authority, control, or administration which may be necessary in respect of these territories and peoples, other than their own self-determined autonomy, shall be the exclusive function of and shall be vested in the league of nations and exercised by or on behalf of it.

" . . . .  
 "(5) That it shall be lawful for the league of nations to delegate its authority, control, or administration in respect of any people or territory to some other state whom it may appoint as its agent

Smuts did not, in his plans, extend his idea of mandates to the former German colonies (see text of Smuts plans, below, second suggestion). See also Baker, R. S., "War Spoils at Paris," in *New York Times*, 28 May, 1922, sec. 7, p. 2, col. 1.

<sup>3</sup> Smuts, J. C., *The League of Nations: A Practical Suggestion*, London, 1918, reprinted in the United States by The Nation Press, 1919. The plan was also circulated privately in mimeograph form among the leading representatives at Paris. The edition of The Nation Press is cited hereafter.

as mandatory, but that wherever possible the agent or mandatory so appointed shall be nominated or approved by the autonomous people or territory.

"(6) That the degree of authority, control, or administration exercised by the mandatory state shall in each case be laid down by the league in a special act or charter, which shall reserve to it complete power of ultimate control and supervision, as well as the right of appeal to it from the territory or people affected against any gross breach of the mandate by the mandatory state.

"(7) That the mandatory state shall in each case be bound to maintain the policy of the open door, or equal economic opportunity for all, and shall form no military forces beyond the standard laid down by the league for purposes of internal police."

From a comparison of these paragraphs with the terms of Article XXII of the Covenant it will already be clear that the provisions in the Covenant were taken, directly or indirectly, from the plan of General Smuts. If, now, we work forward from the publication of General Smuts' book to the adoption of the final text of the Covenant in April, 1919, we shall discover how the suggestions of the South African statesman came to be inserted in the Covenant.

In his suggested plans General Smuts had started out in part from the Fifth of President Wilson's Fourteen Points. At the time Smuts' book appeared, however, Wilson was himself in Europe,<sup>4</sup> and the President therefore had an opportunity to see what practical detailed plans could be made out of the statement of principle with which he had been content in the previous January. Since that time the President had, indeed, drawn up a plan of his own for a league, but upon the subject of the treatment of the former German and Turkish colonial territories it contained nothing at all. He now had the opportunity to revise his plan so as to include matters deemed worthy of addition thereto. His plan was divulged to Secretary Lansing and

<sup>4</sup> Smuts, pp. 9-19.

<sup>5</sup> Wilson arrived at Brest on Friday, 13 December, 1918.

ordered printed, 7-10 January, 1919, and at that time it carried certain "Supplementary Agreements," among which were three Articles dealing with colonial territories.<sup>6</sup> The President had, apparently, both in the previous January, in announcing his Fourteen Points, and ever since then, regarded the colonial settlement, like the boundary settlements in Europe, as a matter to be dealt with prior to and apart from any League of Nations, as a settlement of concrete political matters on the foundation of which and for the protection of which the league was to be created. In that view his stipulation for "an impartial adjustment of all colonial claims" based both on the principle of self-determination and the claims of ruling governments, envisaged not an internationalization of the former German colonies but a fair distribution thereof to all parties in interest. He now adopted a very different position. Both the nature of these "Supplementary Agreements" and their possible source may be discovered from their terms, especially when compared with the plans of General Smuts already examined.

#### "SUPPLEMENTARY AGREEMENTS"

##### I

"In respect of *the peoples and territories*<sup>7</sup> which formerly belonged to *Austria-Hungary, and to Turkey*, and in respect of the colonies formerly under the dominion of the German Empire, *the League of Nations* shall be regarded as the residuary trustee *with sovereign right of ultimate disposal* or of continued administration *in accordance with certain fundamental principles* hereinafter set forth; and this *reversion* and control shall exclude all rights or privileges of annexation on the part of any Power.

<sup>6</sup> Wilson's plan was first made known to those near the President and ordered printed on 7 January, 1919, and at that time it did contain the "Supplementary Agreements" covering, among other things, colonies and mandates. But, as Lansing believes, and as we shall see by reference to internal evidence in the matter, these "Supplementary Agreements" had only recently been added to the draft. Lansing, R., *The Peace Negotiations*, New York, 1921, pp. 77-81, 82-83, 86.

<sup>7</sup> Italics mine; the words italicized occur in the Smuts' proposals and in the same order in which they occur here.

*"These principles are, that there shall in no case be any annexation of any of these territories by any State either within the League or outside of it, and that in the future government of these peoples and territories the rule of self-determination, or the consent of the governed to their form of government, shall be fairly and reasonably applied, and all policies of administration or economic development be based primarily upon the well-considered interests of the people themselves.*

## II

*"Any authority, control, or administration which may be necessary in respect of these peoples or territories other than their own self-determined and self-organized autonomy shall be the exclusive function of and shall be vested in the League of Nations and exercised or undertaken by or on behalf of it.*

*"It shall be lawful for the League of Nations to delegate its authority, control, or administration of any such people or territory to some single State or organized agency which it may designate and appoint as its agent or mandatory; but whenever or wherever possible or feasible the agent or mandatory so appointed shall be nominated or approved by the autonomous people or territory.*

## III

*"The degree of authority, control, or administration to be exercised by the mandatory State or agency shall in each case be explicitly defined by the League in a special Act or Charter which shall reserve to the League complete power of supervision and of intimate control, and which shall also reserve to the people of any such territory or governmental unit the right to appeal to the League for the redress or correction of any breach of the mandate by the mandatory State or agency or for the substitution of some other state or agency, as mandatory.*

*"The Mandatory State or agency shall in all cases be bound and required to maintain the policy of the open door, or equal opportunity for all the signatories to this Covenant, in respect of the use and development of the economic resources of such people or territory.*

"The mandatory State or agency *shall* in no case *form* or maintain any *military* or naval *force* in excess of definite *standards* laid down by the League itself for the purposes of internal police."

From this preliminary history of the matter it is not surprising to hear of Wilson's "strong support of the mandatory system" in the ensuing weeks. Between 10 January, when the President's plan was printed, and 18 January nothing was done outside of informal conversations among the participants in the prospective conference looking to a better understanding of each other's positions.<sup>8</sup> On 18 January the Peace Conference of Paris met, on 25 January a commission was named to draft a Covenant for a League of Nations, on 13 February a tentative draft of the Covenant was agreed upon and on 14 February this draft Covenant was reported to the conference.

Curiously enough, the mandate plan did not come up for discussion in the commission on the League of Nations directly nor did the commission draft the main parts of Article XXII of the Covenant which embodies that plan.<sup>9</sup> The disposal of the German and Turkish territories was a matter of such political and economic importance that it arose in discussion in the Supreme Council at a very early date.<sup>10</sup> It was here that President Wilson so vigorously supported the mandate plan and its application to the German colonies against the opposition of Mr. Hughes of Australia, if not of General Smuts himself.<sup>11</sup> Agreement was reached on 30 January for the adoption of the plan, and the provisions of Article XXII were, still in the form of a resolution adopted by the Supreme Council, turned over to the commission on the League of Nations for incorporation in the Covenant.

<sup>8</sup> For one important aspect of these conferences of 10-18 January see testimony of Bullitt, W. C., before United States Senate Committee on Foreign Relations, 12 September, 1919, in United States, Senate, "Treaty of Peace with Germany," being Senate Document No. 106, 66th Congress, 1st Session, pp. 1165, 1214.

<sup>9</sup> Miller, D. H., "The Making of the League," in House, E. M., and Seymour, C., *What Really Happened at Paris*, New York, 1921, pp. 411-412.

<sup>10</sup> On 23 January; Baker, "War Spoils," as cited, *New York Times*, 28 May, 1922, sec. 7, p. 1, col. 1.

<sup>11</sup> Miller, as cited, p. 412; also Hudson, M. O., "The Protection of Minorities," in same, p. 225.



Before going further it will be useful to analyze the provisions of Article XXII of the Covenant in order to discover just what specific principles are included in the mandate system. A study of the text reveals seven principles or rules which may be listed thus: (1) Colonial territories taken from the enemy are not to be annexed by the victorious powers; (2) These colonial territories are to be put under the joint sovereignty of the allied and associated powers; (3) They are entrusted to the tutelage of certain individual advanced nations; (4) This tutelage is to be exercised by the mandataries under the supervision of the league; (5) The open door is to be maintained in colonial territories so far as the mandatory has any power over them as such; (6) Natives shall be used in a military capacity only for local defense and police; (7) The people of the mandated territories are to have a voice in the choice of the mandataries.

If, we trace back through the draft plans for a league<sup>12</sup> we shall discover that all of these principles appeared in General Smuts' proposals, and a reference to the texts of his proposals and of Article XXII reveals that certain of his own words and phrases make their appearance in the draft of the Covenant reported by the commission on 14 February and, finally, in the text as now in force. Needless to say, these principles and still more of the words of Article XXII, are all present in President Wilson's plan.

A further comparison of Article XXII of the Covenant with the terms of General Smuts' plan will, however, reveal the fact that, while all the fundamental principles of Article XXII are to be found in the Smuts plan, not all the fundamental principles of the latter remain in Article XXII.

Most important of all, Smuts had argued that, "as the successor of the empires"—as he put it elsewhere—the league "should be considered as the reversionary" to whom these

<sup>12</sup> There were, of course, several plans for the league beside those of Smuts and Wilson. They are described, with what the present writer is compelled to believe are some errors, by Mr. Ray Stannard Baker in an article entitled "Beginning of the League Fight," a chapter from his forthcoming work entitled "America and the World Peace," printed in *New York Times* for 14 May, 1922, sec. 8.

territories should pass "with the right of ultimate disposal,"<sup>13</sup> and President Wilson adopted this principle intact, merely using the terms "residuary trustee" instead of "reversionary."<sup>14</sup> So things stood when Wilson had revised his plan in the beginning of January, 1919. Now Wilson's plan was shortly swallowed up in a joint plan laid before the Commission on the League Covenant, wherein no mention was made of the whole matter of mandates; accordingly, we must assume that this proposal to have the league take title to the former German and Turkish territories, which does not appear in the final Covenant, vanished in the course of debates in the Supreme Council. We are told that Wilson was not entirely satisfied with the decisions made in the council, feeling that they did not go far enough in the direction he had indicated, and that he vigorously objected to the idea of a condominium of the victorious powers over the territories in question.<sup>15</sup> Nevertheless, in the end Germany was compelled, by Article 119 of the Treaty of Versailles to cede her colonies not to the league but to the allied and associated powers, and from certain corrections which he is reported to have made in the text of his own plan between 10 and 25 January, 1919, after consultation with French and British leaders (striking out "with sovereign right of ultimate disposal" in Article I of the "Supplementary Agreements")<sup>16</sup> the President seems to have been weaned away fairly early from the idea of giving the league ultimate title to the territories in question. This impression is confirmed when we turn to the draft submitted by the American delegates to the Commission on the League of Nations and which may be regarded as the last version of Wilson's own plan; there likewise the idea of reversion of title to the league is conspicuously absent.<sup>17</sup> And whatever its origin, and notwithstanding that it is not found in Article XXII of the Covenant, this element of allied con-

<sup>13</sup> Above, p. 565.

<sup>14</sup> Above, p. 565.

<sup>15</sup> Miller, p. 412; Lansing, p. 150.

<sup>16</sup> Bullitt, pp. 1214, 1218.

<sup>17</sup> United States, Senate, "League of Nations: American Draft," being Senate Document No. 70, 66th Congress, 1st Session, Washington, 1919.

dominium—not league title—is an integral part of the mandate system as finally adopted.

For the period between the armistice and the final adoption of the Covenant, therefore, President Wilson and General Smuts, and particularly the latter, may be regarded as the authors of the mandate system.

If we wish to understand the ultimate sources of the mandate system, however, we must go back of the appearance of the Smuts plan in December of 1918 and the various American plans and revised plans, and the events of the succeeding four months. That may best be done by starting from the declarations of principle found in the Smuts proposals and by tracing down the influences playing upon Smuts at the time when he was writing his little book.

While composing his pamphlet on the projected League of Nations in 1918 General Smuts is said to have enjoyed the collaboration of certain students of imperial and international affairs in England known as the "Round Table group," from the fact that most of these students are, or have been, associated with the English political quarterly "The Round Table."<sup>18</sup> If we turn to the writings of this group during 1915–1918, and to the writings of allied students of international relations we shall discover certain significant facts.

Many people already felt that some reform was needed in the manner of holding and governing colonial territories in general. The approaching settlement, and the necessity for a decision as to the disposition and future government of the former Turkish and German colonial territories, provided opportunity for such reform. Finally, some form of international control seemed to offer the best way out of the difficulties of the situation.

Thus, early in 1915 Mr. C. E. Fayle, writing more or less upon the basis of articles in the "Round Table," the "Oxford Pamphlets," and consultation with C. R. Buxton and J. M. Keynes, declared:

"It is obvious that no one nation (Britain) can undertake to open up the whole undeveloped surface of the globe; and it is

<sup>18</sup> Miller, as cited, p. 402.

eminently desirable that some attempt should be made to secure agreement and coöperation in the carrying on of the work. It is earnestly to be hoped that the policy of the open door which Britain has adopted in her overseas dominions may be extended to the colonial possessions and spheres of influence of all the Powers. . . . The only way to avert such a scramble (for colonial territories formerly held by Turkey), with all its attendant friction, would be an equitable and friendly agreement by the Powers for the protection of their joint and several interests."<sup>19</sup>

Here the theory of international control is very weak, but the general drift of the thought in that direction can be clearly detected. The conclusion is hardly more than an expansion of the suggestions of H. N. Brailsford, made in the same year, in his *Sketch of a Federal League* for a general colonial open door.<sup>20</sup> Indeed, at one point Fayle rather hints at agreed partition. But mention is made of joint interests and joint action for their protection, and this looks forward in a very decided manner.

During 1916 these ideas developed in the minds of other students of the problem. P. H. Kerr, then editor of the "Round Table," in dealing with the general subject of the political relations between advanced and backward peoples, wrote of the "duties of trusteeship" resting upon the former for the welfare of the latter, including the duty of aiding the backward peoples to attain a capacity to "govern themselves," declaring this to be the ultimate "purpose of the tutelage of the backward by the advanced races." He concluded that "the ruling people ought to govern the dependency as trustees for all mankind," and that "all other nations have an equal title to trade and communicate with them subject to whatever restrictions are necessary for the welfare of the inhabitants."<sup>21</sup> Here are three or four of the principles of the mandate system, and a clear implication that something must be done to enforce these principles of trusteeship.

<sup>19</sup> Fayle, C. E., *The Great Settlement*, New York (and London), 1915, pp. xii, xiii, 194, 195-196.

<sup>20</sup> Brailsford, H. N., *The War of Steel and Gold*, New York (and London), 1915, p. 336 (3d edition).

<sup>21</sup> Grant, A. J., and others, *International Relations*, London, 1916, Chap. V, by Kerr, P. H., pp. 170, 171, 179, 181.

For the clearest anticipation of the mandate system among English students prior to the appearance of General Smuts' book, however, we must turn to a work of J. A. Hobson entitled *Towards International Government*. In that work<sup>22</sup> Hobson points out the amount of international friction caused by competition in the colonial world and by the exclusion of alien capitalists or merchants from colonial territories by those states having them under sovereignty. He also points out the conflict of interest between the governing state and the natives, and the vices of native exploitation. He then asks what a hypothetical international council could do to remedy this situation. He admits that the council might content itself with merely supervising a supposedly fair partition of the colonial world, allowing the colonial states to exclude alien capitalists and merchants from their holdings thereafter, but contends that this would be the worst possible procedure in that it would eventually intensify all the evils it was designed to cure. He then continues: "Or a 'partition' might be made (under the International Council) which, having regard to the special political and economic interests of particular nations by virtue of accessibility or established connections, would acknowledge a special right of intervention and even of political control, but with an express agreement to maintain an open door and equality of opportunity for the capital and trade of other nations. This principle has been embodied, more or less completely, in some recent treaties between several Powers, though lack of adequate guarantees for the faithful performance of the undertakings has made such arrangements exceedingly precarious."<sup>23</sup> Here we have the elements missing from the suggestions just reviewed: the "undertaking" on the part of a protecting nation, chosen because of traditional interests and capacities for watching over a particular colonial territory under the supervision of the "International Council," to observe the principle of the open door in the management of the territory "partitioned" out to it for that purpose—but

<sup>22</sup> Hobson, J. A., *Towards International Government*, New York (and London), 1915, pp. 138-141.

<sup>23</sup> Hobson, p. 141.

not annexed to it in full sovereignty. In the absence of direct evidence, we must, on the basis of the internal evidence and the fact that Smuts is said to have conferred with this group of students in developing his plan in 1918, conclude that these ideas of Hobson provided the South African statesman with the essentials of his mandate plan.<sup>24</sup>

It will be noted, however, that Hobson speaks of this sort of thing having been tried already, albeit without great success, "in some recent treaties." This indicates that certain experiments had been made in the direction of joint international sovereignty and administration in recent years. General Smuts clearly had these in mind when developing his proposals, for he specifically mentioned such "experiments" in his discussion of possible methods of action for the future.<sup>25</sup> He is careful to distinguish between joint title and joint administration, however, and while discarding the idea of joint administration as unworkable—and thus reaching the decisive reason for adopting the mandate system—he retains the principle of condominium by providing for league tenure (and mandate administration).

There is no necessity for describing here the various cases of condominium arising in recent years. After all, not joint title but joint administration is the important thing. It is to recent attempts at international administration or international control of national administration that we must turn. If, therefore, we revert once more to the text of General Smuts' proposals we may pick up a trail which leads straight back into the history of the past twenty-five years and provides the most satisfactory explanation of the genesis and purpose of the mandate system to be obtained anywhere.

General Smuts started out from the idea that annexation to individual victorious nations of the conquered colonial territories and their retention in the exclusive power of these nations was undesirable. That is, he started from the principles of "no

<sup>24</sup> Hobson repeated these ideas—less clearly, however, in 1916: Hobson, J. A. H., "The Open Door," in Buxton, C. R., ed., *Towards a Lasting Settlement*, New York, 1916, pp. 85-109, esp. 106-107.

<sup>25</sup> Smuts, work cited, pp. 14-16.

annexations," "self-determination," and the "open door." He says as much in his own words, and in his proposals these ideas are set down emphatically and repeatedly.<sup>26</sup> Finally, as has been seen, they were taken up one by one by President Wilson and finally put into the text of Article XXII.

But if President Wilson took these ideas, and the detailed proposals designed to render them effective, from General Smuts, and by his efforts placed them in the Covenant, General Smuts himself, it might be said, took them from President Wilson. In making such a statement, however, care would have to be taken to keep within the strict limits of the truth.

In the first place, as Smuts excluded the former German colonies from his proposals for the mandate system the fact that he accepted the Fifth of Wilson's Fourteen Points for application to those territories cannot be regarded as a taking of Wilsonian material for use in building the plan for mandates. Rather it indicates that, as respects these colonies Smuts was, in December 1918, in precisely the position on the colonial question originally held by Wilson,<sup>27</sup> a position now abandoned by the latter for advocacy of the mandate plan.

Further, when speaking of the territories for which he did advocate the adoption of the mandate plan Smuts does not refer to Wilson's Fourteen Points at all, nor, indeed, to any specific source for his doctrine. He simply invokes the principles of no annexations, self-determination, and the open door. If we conclude that he took these principles from the Wilson creed at all it must be because of circumstantial evidence.

For the principle of the open door that conclusion is probably sound. The doctrine of the open door does not appear *eo nomine* in the Fourteen Points, but "equality of trade conditions among all the nations" is demanded in the Third Point, and possibly this is partly what Wilson had in mind. At all events, the policy of the open door is a traditional American policy and neither President Wilson nor General Smuts nor anyone else could, in 1918, urge that policy and employ that phrase without, con-

<sup>26</sup> Above, pp. 565-566.

<sup>27</sup> Above, pp. 566-567.

sciously or unconsciously, adopting and supporting an historic American doctrine.

The open door policy has not, it is well recognized, been uniformly effective in practice and the policy has been so unevenly and ineffectively applied in the Far East largely because of the absence of any requirement for supervision by or report to the community of nations as a whole. The nations interested in certain sections of China could be held to the open door policy not by any general international supervision but only by the efforts of the United States or Britain, acting singly, and the United States could not invoke the terms of any mandate or similar document limiting the free action of the exploiting nations there. The thing needed to make the open door principle effective was the device of the mandate with general international supervision in connection therewith.

That particular solution of the problem was discovered more than a dozen years before the mandate system was actually established in the League Covenant. It was discovered by an American President and an American secretary of state. It was described and prescribed by them in words which anticipate the action of 1919 in almost every detail.

The story may be told in a few words. In 1905 France and Germany became involved in a dispute regarding their relative rights and interests in Morocco and regarding certain French actions which, Germany alleged, violated German rights there. An arrangement was sought, in the Conference of Algeciras, in the following year, which would satisfy German claims and yet allow to France the special power and influence in Morocco which she claimed on grounds of propinquity and special interest. In the course of events, as a result of the fact that the United States had been instrumental in having the conference meet originally, had taken a leading part in formulating the preliminaries of discussion, and stood in a peculiarly favorable position to suggest a solution of the difficulty, Mr. Elihu Root, the American secretary of state, engaged in a long correspondence with the German ambassador in Washington in the spring of 1906, the most essential parts of which follow:<sup>28</sup>

<sup>28</sup> Bishop, J. B., *Theodore Roosevelt, and his Time as told in his Correspondence*, New York, 1920, pp. 489-491, 493-495, 495-497, 497-499.



Secretary Root to Baron Speck von Sternberg, 19 February, 1906:

"The President has been keeping in mind the suggestion of your memorandum of January 29th that the United States should propose to entrust the Sultan of Morocco with the organization of the police forces within his domains and to allow him certain funds, and to establish an international control with regard to the management of these funds, and the carrying out of the whole plan.

". . . . If it is acceptable to Germany, the President will make the proposal suggested with the following details, which should, perhaps, be called modifications, but which he does not consider to interfere with the accomplishment of the end Germany had in view in securing the conference. He will propose:

"1. That the organization and maintenance of police forces in all the ports be entrusted to the Sultan, the men and officers to be Moors.

"2. That the money to maintain the force be furnished by the proposed international bank, the stock of which shall be allotted to all the powers in equal shares (except for some small preference claimed by France, which he considers immaterial).

"3. That duties of instruction, discipline, pay and assisting in management and control be entrusted to French and Spanish officers and non-commissioned officers, to be appointed by the Sultan on presentation of names by their Legations.

"That the senior French and Spanish instructing officers report annually to the government of Morocco, and to the government of Italy, the Mediterranean Power, which shall have the right of inspection and verification, and to demand further reports in behalf of and for the information of the Powers. The expense of such inspection, etc., etc., to be deemed a part of the cost of police maintenance.

"4. That full assurances be given by France and Spain, and made obligatory upon all their officers who shall be appointed by the Sultan, for the open door, both as to trade, equal treatment and opportunity in competition for public works and concessions.

"The foregoing draft has been carefully framed with reference to the existing situation at Algeiras, so as to give it a form which

would make concessions from the French position as easy as possible, and the President thinks that it conserves the principle of the open door without unduly recognizing the claims which rest upon proximity and preponderance of trade interests. He thinks it is fair, and earnestly hopes that it may receive the Emperor's approval."

Secretary Root to Baron Speck von Sternberg, 7 March, 1906:

"May I ask you to transmit to the German Emperor a message from the President which is as follows:

" . . . . ."

"Under these circumstances, I feel bound to state to Your Majesty that I think the arrangement indicated in the above mentioned letter of February 19th is a reasonable one, and most earnestly to urge Your Majesty to accept it. I do not know whether France would accept it or not. I think she ought to do so. I do not think that she ought to be expected to go further. If this arrangement is made, the Conference will have resulted in an abandonment by France of her claim to the right of control in Morocco answerable only to the two Powers with whom she had made treaties and without responsibility to the rest of the world, and she will have accepted jointly with Spain a mandate from all the Powers, under responsibility to all of them for the maintenance of equal rights and opportunities. And the due observance of these obligations will be safeguarded by having vested in another representative of all the Powers a right to have in their behalf full and complete reports of the performance of the trust, with the further right of verification and inspection.

" . . . . ."

Ambassador Speck von Sternberg to President Roosevelt, 13 March, 1906:

"The Emperor's answer to your letter transmitted by me on the 7th instant is as follows:

"Mr. President: . . . . ."

"I have also given to your recent statements in all points my fullest attention and entirely agree with you that a mandate given by the Conference to France and Spain differs in a judicial sense essentially from any action on the part of France based

solely on special agreements with England and Spain. Such a mandate would give to France a certain monopoly in Morocco which would prejudice the economical equality of the other nations, if no sufficient international counterpoise were created.

. . . . ."

Secretary Root to Baron Speck von Sternberg, 17 March, 1906:

"It may be useful for me to re-state in writing the answer of the United States, already given to you orally, to the questions which you have asked regarding our course upon the proposal made by Austria on the 8th instant in the Algeiras Conference.

" . . . . ."

"This view of international right was interposed against the claim of France to organize the police in Moroccan ports through the agency of her officers alone. France has yielded to this view of international right to the extent of offering to become, jointly with Spain, the mandatory of all the powers for the purpose of at once maintaining order and preserving equal commercial opportunities for all of them. It was further proposed that an officer of a third power, acting in behalf of all the powers, should have the right of general inspection for the purpose of keeping the powers advised whether their agents, France and Spain, were observing the limits and performing the duties of their agency. This arrangement seemed to us to accomplish the desired purpose. It seemed with two mandatories jointly charged, no individual claim of possession or control was likely to grow up; that, with the constant reminder of the general right involved in the inspectorship, the duties of the agency were not likely to be forgotten and it seemed that the proximity of France and Spain to Morocco, and their special interest in having order maintained in that territory made it reasonable that they should be selected as the mandatories rather than any other powers.

" . . . . ."

A reading of this correspondence finally reveals the most important source of the mandate system, including the use of the very word itself. The general right of most-favored-nation treatment, or equality of trade rights, accorded to foreign nations in Morocco by Article XVII of the Madrid Convention of 1880, was taken up by the United States, more or less upon the sugges-

tion of Germany, in a renewed expression of the open door policy, and a mandate scheme was invented to make this effective, while providing protection to the natives and also allowing special privileges and authority to the most interested nation, acting under a mandate and subject to international supervision in its acts. This was all put into Articles I-XII of the General Act of Algeciras. It was this treaty which Hobson had in mind in 1915, and cited as an example of what he thought should be done in the future with colonial territory.<sup>29</sup> Thus the American device of 1906 passed through Hobson to Smuts and so back through Wilson into the Covenant.

Two threads remain to be caught up and woven into the fabric of this story before the whole is complete. Of all the elements in the mandate system as already analyzed five have now been traced to their sources, namely: the open door principle; national administration in trust for interests of the natives and the world at large, including those of the administering nation; international supervision of the execution of this mandate; condominium by the Allies instead of sovereignty in the league; and restrictions upon the military use of native inhabitants. What of the twin principles of no annexation and self-determination, or the supposed right of the colony to choose its own mandatary, which go to complete the mandate system as created in 1919?

If we turn again to the plan of General Smuts we find, first, that he couples the principle of "self-determination" with that of "no annexation," and, second, that he brings forward the idea of reversion to the league out of the clear air, simply as a way out of a difficulty.<sup>30</sup> Wilson took these ideas over bodily from Smuts and it was only as a result of the debates in the Supreme Council that the second was modified against his desires into an allied condominium. Where, then, did they originate?

If we turn back to Wilson's Fourteen Points of 8 January, 1918<sup>31</sup> we shall find no use of the phrases "no annexations" and "self-

<sup>29</sup> Hobson, p. 141. The writer feels entitled to record the fact here that he was familiar with the Root-Sternberg correspondence, including its invention of the mandate system, before he read Mr. Hobson's reference to the Act of Algeciras.

<sup>30</sup> Above, pp. 565-566.

<sup>31</sup> Carnegie Endowment for International Peace, Division of International Law, "Official Statements of War Aims and Peace Proposals, December 1916 to

determination." But these phrases do appear in the statement of war aims made by Lloyd George on 5 January,<sup>33</sup> and the principles which they express are implicit in the Fourteen Points<sup>34</sup> and both Lloyd George and Wilson employed both phrases on other occasions before and after the dates of their principal declarations.<sup>35</sup> In a general sense, then, Smuts was doing here what he was doing in the case of the open door policy, taking a principle which had become part of the general allied political doctrine, as expressed largely by President Wilson.

More specifically, Smuts himself used the formula "no annexations, and the self-determination of nations" (his quotation marks), and declared that the principles which he had in mind had been expressed by that formula "for the last two years." Of what was he thinking? Obviously, of the cry "No annexations, no indemnities, and the self-determination of nations," which arose in central and eastern Europe, in German and Russian socialistic circles in 1917, and was adopted all over the western world in the course of the next two years as an expression of socialist and radical and liberal opposition to a militarist peace. Just when those words were first put together in that sense and by whom, it would be difficult to say, and the results would probably not justify the labor required to discover them.<sup>36</sup> Suffice it to say that, expressing in part the opposition to conquest and

November 1918," being *Pamphlet No. 31* of the Division, comp. by Potter, P. B., pp. 234-239.

<sup>33</sup> Same, pp. 225-233, especially p. 228.

<sup>34</sup> In Points VI, VII, IX-XII; same, pp. 237, 238.

<sup>35</sup> Wilson had said on 2 April, 1917, in asking the United States Congress to declare war on Germany: "We desire no conquest, no dominion. We seek no indemnities. . . . We are. . . . champions of the rights of mankind," and these rights he had just described as "the rights of nations . . . to choose their ways of life and obedience" (same, p. 91); and in asking for a declaration of war upon Austria Hungary on 4 December, 1917, he used "the formula 'No annexations, no contributions, no punitive indemnities' " to express the war aims of the Allies (same, p. 195).

<sup>36</sup> No official statement of war aims made before the address of April 2 comes anywhere near the formula; on May 19 there occurred in a statement of war aims made by the Russian Provisional Government the statement that that government did not seek "a peace with annexation or indemnity and based on the right of nations to decide their own affairs" (same, p. 102).

war indemnities and imperial oppression which had been growing widely during the later nineteenth and early twentieth centuries in all lands, and in part the highly specific German-Russian socialist and liberal criticism of official war aims in 1917-1918, they had a determining influence on the professed aims of the Allies and so, through the declarations of Lloyd George and Wilson and the proposals of General Smuts, made their way into the mandate system of the League of Nations.<sup>34</sup>

The foregoing analysis may be summed up as follows: The modern opposition to territorial conquests and annexations and to the use abroad of colored colonial troops, together with the modern practice of condominium, the ideal of self-determination, and the policy of the open door in colonial territory, as embodied in the Roosevelt-Root mandate plan for Morocco under the Act of Algeiras of 1906, converged, through the writings of the Round Table group in England in 1915-1917 (especially Hobson), in the mind of General Smuts in 1917-1918, were then and there reënforced by the Wilson principles for the peace settlement, cast into the terminology of the mandate and formulated in the Smuts "Suggestions" on 16 December, 1918. From here they were taken up by President Wilson, and, by decisions of the Supreme Council, the Commission on the League of Nations, and the Peace Conference itself, were written into Article XXII of the Covenant of the League and the Treaty of Versailles.

<sup>34</sup> It has been claimed that Wilson's Fourteen Points (of 8 January, 1918) were devised directly to meet a demand for a restatement of allied aims cabled on 3 January to Washington by American propagandists in Russia. The evidence is inconclusive and the claim has been denied by Mr. George Creel, who is alleged to have been in charge of the action in Washington. On the other hand, the internal evidence in the address of 8 January is strong: the Russian negotiations at Brest-Litovsk are made the occasion for the speech and the share of Russia in the settlement is given great prominence, being placed ahead of Belgium and all other territorial questions. It is almost certainly true that the address, even if composed in the main as early as 1 January, as Mr. Creel says, was strongly influenced by the Russian situation. See *The Nation* (New York), Vol. CXI, p. 30 (10 July, 1920); *Russian-American Relations*, New York, 1920, pp. 67-74. It may not be without point to note that the Fourteen Points also corresponded very closely to a Russian statement of peace aims made on 19 October, 1917; see Ross, E. A., *The Russian Bolshevik Revolution*, New York, 1920, Chap. XXIV.

## BRITISH FOREIGN POLICY AND THE DOMINIONS

ALFRED L. P. DENNIS

Important changes in the direction and conduct of British foreign policy have been taking place before our very eyes. The long traditions and the omnipotence of Downing Street in diplomatic affairs have received a challenge; for today the self-governing dominions and India are taking a new part in British foreign policy and are requiring for themselves a larger share in decisions of imperial importance. Not content with such claim to partnership in foreign affairs Canada has received the right to separate diplomatic representation at Washington; and soon we may welcome a Canadian minister, who at the British embassy will rank second only to the ambassador himself. Furthermore in view of recent events as to Ireland it is by no means impossible that, as the Irish Free State takes up its new position as a dominion, an Irish minister from Dublin may present his legal credentials at our department of state. India also has a new government in the making; and as she travels toward dominion status her importance in foreign affairs is growing year by year.

Such changes in the foreign relations of the British Empire are vital to the United States, for that vast and scattered domain is of more importance to us than any other foreign power in the world. We used to be part of it; and today nearly half of our total foreign commerce is with the British Empire. About 46 per cent of our exports go to the various parts of that empire; and nearly 43 per cent of our total imports are shipped to us from British ports. In 1919-20 we sent to the United Kingdom alone goods worth more than two billion dollars; yet of imports from the British Empire more than three-quarters came not from Great Britain but from other parts of the empire. In other words, if we reckon shipping, finance, and trade of all

sorts more than half of our ordinary business with the rest of the world is done with the British and this not merely in England but in every part of the earth.<sup>1</sup>

Demonstration of changes in British diplomacy were clear enough at the Washington conference. Representatives of British self-governing dominions and of India were present as full members of the British Empire delegation and as representatives of their own separate governments. They signed the treaties which they had helped to negotiate and which were subject to ratification by their parliaments as well as by our Senate. Indeed one of these treaties—the Four Power Treaty which ends the Anglo-Japanese Alliance—is largely due to the problem presented by the interests of British dominions; and the history of that alliance is closely linked with these changes in the control of British foreign policy.

In fact armament and Far Eastern questions had already been the subject of another conference which met in London in June, 1921. That meeting included premiers and representatives of governments wholly within the British Empire; but it was practically adjourned in August till the results of the Washington conference could be known. Thus it appeals to our American imagination that in this fashion affairs of the British Empire crossed the ocean for settlement in the United States. It is high time, therefore, that we realized not only that our annual imports from Canada are larger than those from the United Kingdom but that in 1921 it was a Canadian representative at London who objected to the renewal of the Anglo-Japanese Alliance and who, in one sense, helped us and forced the way to a direct consideration of the Far Eastern situation at the Washington conference.

President Harding's invitation to the Conference on Limitation of Armament and Pacific and Far Eastern Questions thus gave impetus to influences which were already at work within the British Empire and gave opportunity for consideration and decision as to policies which will have effect far into the future.

<sup>1</sup> *Statesman's Year Book*, 1921. Cf. Foster: "Canada and the United States" in *North American Review* vol. 216, pp. 1-10, (July 1922).



However important these recent sessions may be in international affairs, whatever influence the limitation of armament may have on the progress of peace, the Washington conference has now also become a part of both American and British history. The presence of dominion representatives at the Paris conference was largely due to the World War. Their participation at Washington set a precedent in time of peace and their attendance at the Genoa conference followed as a matter of course.

So in the first place we may ask why are the British dominions and India now represented at international conferences? What is their position within the empire as regards foreign policy? Why was the call of the Washington conference so significant both for the dominions and for the British Empire as a whole? And what is the meaning and importance of such events to the United States?

These questions touch matters both complicated and controversial; but if we work back from the Washington conference the fundamental issues may be clearer. When the United States invited the British to come to the conference the invitation was sent to the Foreign Office at London. The Foreign Secretary accepted and added that Great Britain would send a delegation representative of the empire as well as of the United Kingdom. In this British Empire delegation were included representatives of Canada, Australia, New Zealand, and India who appeared both for the empire as a whole and for their respective local governments. South Africa did not send a special member of the delegation because of annoyance that a separate diplomatic invitation from Washington had not been extended. Indeed by confidential cables the South African government tried to persuade other dominions to join in a refusal to attend the Washington conference unless the special position of each dominion were recognized by such a separate invitation. This extreme nationalism or separatism on the part of General Smuts did not receive support in the other dominions, and the correct diplomatic unity of the empire was preserved. Indeed power was finally given to Mr. Balfour to sign the treaties for South Africa.

This whole matter of the relations of the colonies to the mother country has been developing very fast. It is barely seventy-five years since responsible government began in rather casual fashion in Canada; only fifty-five years have passed since a federal system was given to Canada as a whole; the Commonwealth of Australia dates only from 1901 and the Union of South Africa, from 1910. Indeed less than fifty years ago there was common talk of the rapid disintegration of the empire. However, after 1870 an imperial reaction set in, and instead of the colonies clinging to the mother country we find in the last two decades of the last century a cautious movement in England seeking to strengthen the imperial connection. This endeavor took form in the discussion of plans for imperial federation. Yet it is one of the ironies of the situation that, when the federationists gained the calling of a colonial conference at the celebration of Queen Victoria's jubilee in 1887, care was taken "to exclude from the agenda 'what is known as Political Federation';" nor has federation apparently any better chance of success today.<sup>2</sup>

Other meetings followed this jubilee conference, and in 1907 the name Imperial Conference was first adopted. Then plans were made to have a similar gathering every four years of the prime ministers of the self-governing dominions under the prime minister of the United Kingdom to discuss questions of common interest to these governments, provision was also made for "subsidiary conferences" to be called whenever necessary or to deal with particular subjects. As the result of this decision a conference on defense met in 1909 and later the dominion representatives in the Imperial Conference, which met in 1911, sat also in meetings of the committee on imperial defense. This separate body had been first organized in 1904 directly under the British prime minister. Its composition was elastic and often included the cabinet ministers charged with naval, military, financial, foreign, and colonial affairs. In 1911 when the Imperial Conference was in session the dominion premiers were invited also to attend meetings of the committee on imperial defense.<sup>3</sup>

<sup>2</sup> *Proceedings of the Colonial Conference of 1887*, p. VIII.

<sup>3</sup> Cf. Hall: *British Commonwealth of Nations*. London, 1920. Ch. V.

By this step the dominions were brought "in touch with foreign affairs in their bearing on defense problems" for the empire as a whole. Indeed this meeting in 1911 was one of the direct causes of dominion participation in the international conference at Washington in 1921; for it was at the meetings of the imperial defense committee in 1911 that the last renewal of the Anglo-Japanese Alliance was first discussed by the dominion premiers. At this time also Sir Edward Grey (later Lord Grey of Falloden), who was then foreign secretary, made for the first time a complete and confidential report, for the benefit of the dominion prime ministers, on the international position and foreign policies of Great Britain.<sup>4</sup> This was a great innovation; and I well remember the delight expressed in London at that time by dominion representatives at the fashion in which they were met by Sir Edward Grey and at the frank way in which the relation of British foreign policy to imperial questions was discussed before them. The results of these new ideas and methods in Downing Street were of course seen later in the splendid rally of the dominions to the support of England on the outbreak of the World War in 1914. For all of these reasons 1911 is the starting point of many present tendencies in British imperial and international relations.

The conference of 1911 was also important because the entire problem of the part of the dominions in British foreign policy was raised almost for the first time. Other efforts to bring this about had largely failed; now the matter took more definite shape. This, however, did not lead to decisions which clearly and promptly altered the general practice of international relations or which brought about agreement as to the status and functions of the dominions in foreign affairs and policy. Thus, Mr. Asquith, who was then Prime Minister, was at pains to oppose anything like a permanent imperial advisory council because it might destroy the authority of the British government in foreign policy.<sup>5</sup> In other words, London was not "turning over" foreign affairs to Ottawa or Melbourne though, in

<sup>4</sup> *Proceedings of the Imperial Conference 1911*, p. 440.

<sup>5</sup> *Ibid.*, p. 70.

point of fact, by the very frankness and liberality of the information offered to the dominion governments the home authorities had quickened understanding within the empire and enlisted support for the problems and policies of Downing Street.

On the other hand, Sir Wilfred Laurier, then prime minister of Canada, had declared for Canadians: "We are a nation—We have practical control of our foreign relations;" and in this he referred primarily to relations with the United States. Sir Robert Borden, who succeeded Laurier, and who was to be a member of the British delegation both at the Paris and Washington conferences, said before the Canadian House of Commons in 1912: "When Great Britain no longer assumes sole responsibility for defense upon the high seas, she can no longer undertake to assume sole responsibility for and sole control of foreign policy." He repeatedly maintained that on this basis the dominions sharing in defense "must necessarily be entitled also to share in the responsibility for and in the control of foreign policy" for the empire as a whole. Thus the entire matter of the power of the dominions in foreign affairs remained a subject of debate.

Later Sir Robert Borden in his lectures before the University of Toronto in 1920 summarized the situation as follows: "New and convenient methods of consultation had been established through periodical conferences, in which at first the Dominions were regarded as subordinate dependencies attached to a department of the British Government, but in which they eventually took their place as sister nations upon equal terms with the United Kingdom. The Dominions were originally included in commercial treaties without much regard for their wishes or interests. Eventually no such treaty bound them except by the expressed consent of their Governments. At first Canada was told somewhat brusquely that no Canadian Commissioner could take part in the negotiation of a treaty affecting his country; in the end by 1914 Canada freely negotiated her own commercial treaties by her own commissioners without control or interference except of a formal character. Canadians acting as British agents represented the interests of Canada and the

whole Empire in the Behring Seas and Alaskan Boundary arbitrations. . . . Canada's right to a voice in foreign policy began to be recognized. Her complete control over her policy in respect of military and naval defense was acknowledged. By these sure steps, Canada is steadily mounting to the stately portal of nationhood."<sup>6</sup>

Three years after the Imperial Conference of 1911 came the World War; but the crowded years, 1914-18, do not directly concern us except as they gave in some ways a short cut to many things for which true liberal imperialists had long worked. In addition to their rights in the matter of commercial treaties dominions were now also to have a part in making political treaties for the empire as a whole. Yet this change was not the result of solemn constitutional conventions or of new laws; nor did it follow bitter conflict between the dominions and the mother country. The change came through war, but a war in which the dominions played their full part side by side with Great Britain. The young men of Canada, of Newfoundland, of Australia, of New Zealand, and of South Africa died for the unity and preservation of the empire. By their blood thus freely given they brought about a rapid evolution in the constitution of the British Empire and won for the dominions a new voice in British foreign policy and representation in the diplomacy of the world.

The pressure of the war had thus hurried matters for, while an imperial conference was meeting in London early in 1917, the dominion premiers had also been sitting with the British prime minister and other members of the British Cabinet in a newly organized Imperial War Cabinet to deal with affairs of common concern. Sir Robert Borden with classic clearness described the situation: "Ministers from six nations sit around

<sup>6</sup> For this and other quotations and for many suggestions I am greatly indebted to Sir Robert Borden who allowed me to read the manuscript of his lectures. Sir Arthur Willert of the British Foreign Office, Mr. Loring Christie of the department of external affairs, Canada, and Mr. E. L. Piesse of the prime minister's department, Australia, have also helped me greatly. But in many ways this article is based on personal observation and contacts during the past few years and I am responsible for all statements and interpretations.

the council board, all of them responsible to their respective parliaments and to the people of the countries which they represent. Each nation has its voice upon questions of common concern and highest importance as the deliberations proceed; each preserves unimpaired its perfect autonomy, its self-government, and the responsibility of its ministers to their own electorate."<sup>7</sup>

Meanwhile to the Imperial Conference came for the first time representatives of India appointed by the British government of India; for, by steps impossible to describe in this article, India was slowly advancing toward dominion status. This further innovation was, therefore, largely in anticipation of future events. It was due at this time to the gallant part played by Indian troops in the war and to the importance of the immigration question within the empire. This enlarged Imperial Conference of 1917 left a heavy mark on the constitution in its declaration regarding foreign policy. In connection with a proposal for a constitutional conference or convention, to be held after the war was over, the imperial conference also declared that any constitutional readjustment "should be based upon a full recognition of the dominions as autonomous nations of an imperial commonwealth, and of India as an important portion of the same and should recognize the right of the dominions and India to an adequate voice in foreign policy and in foreign relations. . . ."<sup>8</sup>

This constitutional conference has not yet met and no formal arrangement for the regular participation of the dominions in the direction of the foreign policy of the empire has yet been made. The influence of this resolution of 1917 has, however, been shown in the development of actual dominion coöperation in the international relations of the empire; and it also prepared the way for the attendance of dominion statesmen at Washington.

<sup>7</sup> From a speech on April 3, 1917, before the Empire Parliamentary Association (published as a separate pamphlet) and also quoted in *The War Cabinet Report* (1917), pp. 8-9. Cf. Hall; *op. cit.* and Keith: *War Government in the Dominions*, Oxford, 1921.

<sup>8</sup> *Proceedings of the Imperial War Cabinet*, p. 61.

In such fashion the Imperial War Cabinet, which was also called twice for long and frequent sessions in 1918, finally took form or was merged into the British Empire delegation which, as a diplomatic body, represented Great Britain and the empire at the Paris Peace Conference in 1919. This step was made easier by the fact that dominion prime ministers had been admitted to the Supreme War Council of the Allies and that, in England, after the armistice, they also took part in discussions as to peace terms.

Under the circumstances it was agreed at London in December, 1918, that the dominions and India should be represented as separate governments in the peace conference and that their representatives should also meet with the other English delegates as speaking and signing for the British Empire as a whole. To this final step there was some objection in Paris; but this change in the conduct of British foreign affairs withstood all criticism. Indeed when the Covenant of the League of Nations was framed the dominions and India were included as five individual states. As we can well recall this fact figured materially in the opposition in this country during 1919 to the Treaty of Versailles. In 1921 the government of the United States recognized and welcomed these dominion and Indian delegates as members of the British diplomatic unit at the Conference on the Limitation of Armament.

Such development, however, was so rapid that many might have expected that the course of events during the war and at Paris would be regarded as exceptional, as due to the heroic part played by the dominion troops in the common victory, or to special British pressure, and, therefore, as not in reality constituting a permanent change in international practice. It was scarcely reasonable to suppose that the British Foreign Office would at once surrender its proud position as the sole channel of international communication and representation not only for the United Kingdom but for all parts of the British Empire.

Furthermore the inclination of other states had to be considered. What would foreign governments say to this new turn of affairs? They had no diplomatic connections with the dominions and yet, if this practice were to continue, they would be

expected in the future, when occasion arose, to receive Canadian, Australian, New Zealand, South African, or Indian delegates not only as British diplomats but as representing separate local governments. Altogether the situation was almost without real precedent or perhaps beyond understanding or explanation. The titles of the King of England were many; now apparently he was not only a single royal head but a multiplication of monarchs, a sort of serial sovereign. Of course as far as Great Britain was concerned it was her own affair; she must settle her own domestic if imperial problems. Yet it was a bit difficult in a correct diplomatic world for foreigners to meet unexpectedly the representatives of the antipodes in the conclaves of the old world.

In some respects we Americans are quite ignorant regarding international affairs; we don't even know much about Canada, our next door neighbour; but it was perhaps a fortunate thing that after Paris the next great international conference should have been at Washington. To be sure, the dominions have been represented at Geneva in the League of Nations, where, by the way, more than one of them has voted against Great Britain; but after all the gathering at Washington was to rank as one of the historic international congresses. Certainly Americans are not afraid of new methods—we favor open diplomacy and rather enjoy diplomatic bombshells. We have a fellowship with youth; we were once part of the old British Empire ourselves; and we thought we could understand the point of view of the self-governing dominions better, perhaps, than some of the European nations. At all events our welcome to the dominions was not misplaced. We liked their dignity and their frankness; and at the end we felt that we wanted to know them better and longer.

There is, however, one more stage in the final progress of the British Empire delegation to the recent conference. After Paris what were the precise reasons why the dominions should so soon again appear in international affairs? Here is a vital link with the very origin, program, and performance of the Washington conference itself. At the same time we can recall the Imperial



Conference of 1911 and the fact that the Anglo-Japanese Alliance was then discussed by the British Foreign Office with the dominion prime ministers. The Anglo-Japanese treaties of 1902 and 1905 had not been submitted to the dominions; but, in connection with the problem of imperial defense in 1911, stock was taken of the entire international situation. Military and naval problems were linked and properly studied side by side with foreign policy; and the Anglo-Japanese Alliance was renewed in July, 1911, after such a coöperative survey on the part of the minister of the United Kingdom and of the dominions. Thus this alliance served as an introduction for the dominions to the field of "high politics." It was the first political treaty in which they had had a share by discussion and debate as to its renewal.

It was, therefore, only natural that the dominions should take part in any discussion of the continuance of the Anglo-Japanese Alliance in 1921. Consequently plans were suggested in October, 1920, for a special conference to be held at London. At first it appeared to be a renewal of the work of the Imperial War Cabinet, but the term "cabinet" was soon dropped. This meeting was not even an imperial conference in a historical and technical sense; it was a council of governments within the empire, a conference of prime ministers of the United Kingdom, of the dominions, and of representatives of India. In June, 1921, its immediate problem was the Anglo-Japanese treaty; yet in the meantime the United States had for some weeks been consulting informally with the allied powers as to the need of checking competition in armaments. This question therefore, was promptly connected with the situation in the Far East and the Pacific in the first meetings of the London conference. Debates in Parliament and discussion in the press had also served to associate these two matters.<sup>9</sup>

Mr. Hughes, the prime minister of Australia, was very frank for at the outset he proposed a conference of Great Britain,

<sup>9</sup> Cf. *Conference of Prime Ministers, etc. Summary of Proceedings and Documents* (1921); also (London) *Times*, April 28, 29, May 3, 7, 23, June 18, 19, and July 8, 1921, for useful comment.

America, and Japan regarding the Anglo-Japanese Alliance "to ascertain what might be mutually acceptable" and a second conference of the chief allied powers with the United States to discuss limitation of armaments. These were dominion proposals, and in his speech Mr. Hughes characteristically showed that he was not averse to the idea that to the dominions should come credit for settlement of matters of such great international importance.<sup>10</sup> Actually the plans which, after some uncertainty in view of a natural confusion at London, led to the acceptance of President Harding's invitation for a single conference to discuss both subjects at Washington were thus suggested in the London conference. In this way the dominions had an early share in the preliminaries of the meetings last winter.

Meanwhile the British Foreign Office is having sufficient opportunity to consider the effect of dominion coöperation and control in regard to international relations. In the text of the Anglo-French treaty which was proposed at Cannes early in January 1922, one article read: "The present treaty imposes no obligation whatever on any Dominion of the British Empire unless or until approved by the Dominion interested." The same stipulation as to the dominions was made in the (unratified) Anglo-French treaty of guarantee of 1919. This would imply that it might be possible for Great Britain to be involved in a European war in which the dominions need have no share.

The possibilities of such a situation are so varied and uncertain that we can only wait on the event. Certainly such an article is evidence of the influence of dominion criticisms of British foreign policy. Thus General Smuts said at the conference of prime ministers (1921): "It was impossible to continue entangled in the embroilments of Europe and the Empire should revert to the traditional policy of having no European entanglements." Of course, we must recall that South African nationalism is extreme; it resented the lack of a separate diplomatic invitation from the United States and at first even opposed the attendance of the dominions at Washington. But even Sir Robert Borden in October, 1920, commented on British foreign

<sup>10</sup> *Conference of Prime Ministers, etc.*, pp. 20-21.

policy: "If the self-governing Dominions may not have adequate voice and influence in the direction of the Empire's foreign policy, it is not improbable that some of them will eventually have distinctive foreign policies of their own; and that may mean separation." And again: "To us in Canada it seems that the vision of Downing Street has been turned too much on Europe and the Near East, too little upon the vast possessions within our Empire."<sup>11</sup>

It is only natural, therefore, that the weight of tradition, the self-consciousness of the British Foreign Office, and the nearness of European elements should make London hesitant to surrender to the dominions more than is absolutely necessary. It is never easy for a great government department with a proud history to give up its monopoly of direction or to open its windows to winds from the Seven Seas. A divided and diffused authority is always difficult and is particularly awkward in international matters. The United States has found this true in such troublesome matters as California land laws and Japanese immigration. Furthermore "less than half a century had passed since the most commanding intellects in the statesmanship of Britain anticipated and even hoped for the disruption of the Empire. Of what consequence was half a continent in comparison with an English county?"<sup>12</sup> The very rapidity with which the voice of the dominions has won authority is itself almost a danger to the consolidation and development of this new position. Under these circumstances the fact of the Washington meeting at this precise period, in time of peace, without the urgency of immediate danger to produce groupings or decisions, is likely to be of great significance. Paris introduced a new element; Washington became a precedent; and the problem of the Anglo-Japanese Alliance may turn out to have served as an unexpected incitement to settlement of far larger matters in Anglo-American accord and in British imperial practice.

Still another phase of this general question arises in connection with the proposal to send to Washington a separate and

<sup>11</sup> *Marfleet Lectures* at University of Toronto.

<sup>12</sup> *Ibid.*

permanent Canadian diplomatic representative. This is not a new matter; it has been frequently raised during the past fifty years; and there are precedents for Canadian diplomats on numerous occasions. Negotiations begun before the World War finally led in 1920 to the arrangement, by authority of both the British and the Canadian governments, and with the approval of the United States, that the Crown should appoint to Washington on the advice of the Canadian cabinet of the day, a "Minister Plenipotentiary who will have charge of Canadian affairs and who will at all times be the ordinary channel of communication with the United States Government in matters of purely Canadian concern, acting upon instructions from and reporting direct to the Canadian Government. In the absence of the British Ambassador, the Canadian Minister will take charge of the whole Embassy and of the representation of Imperial as well as Canadian interests."

The "diplomatic unity of the Empire" is to be preserved; but anyone can see that such an arrangement is open to a variety of possible results. As a practical matter it is unquestionably a short cut, for today more than half of the daily business of the British embassy relates to Canadian affairs. Nevertheless in the course of involved and prolonged negotiations the interest of more than one part of the British Empire may be touched; and on occasion it might be that the United States would be in doubt as to with whom it was talking—Canada or Great Britain. International relations are rarely simple and unrelated. Furthermore diplomacy is a very human business; a great test of this new method would, therefore, lie with the degree of coöperation between the British ambassador and the Canadian minister; and the friendly understanding of the secretary of state would be essential.

We may also wonder whether eventually other British dominions may follow the example proposed by Canada, or if the system is to be extended to other countries. As yet it is uncertain as to whether we are to see an Irish minister at Washington; but the possibilities of such arrangements are interesting to say the least. In this speculation, however, it is important to note

that we are observing a constitutional development which is not yet completed. The dominions and India were represented at the Genoa conference. Even South Africa sent a representative; and, if the settlement of Irish affairs had permitted, it is very probable that the Free State would have made its official debut at that international gathering.

Nevertheless the real and steady influence and participation of the dominions in British foreign policy has not been finally measured. Discussion and assertion have at times gone beyond reality. There is as yet in the entire problem a certain lack of constitutional form and procedure. This is of course due in part to British methods of approach and of development. An anomaly is usually a necessary introduction to British constitutional progress. Moreover in the dominions there has been uncertainty and hesitation as to the degree of their influence and the character of their position in foreign relations. Public opinion is still in the making and until it has become more settled and uniform it would be a mistake to regard this whole movement as completed.<sup>13</sup>

<sup>13</sup> Thus the fine pioneer work by the group of men associated with the *Round Table* has at times been repudiated by many in the dominions. Mr. H. D. Hall in his admirable book, *The British Commonwealth of Nations*, went to the limit of practice and of opinion in 1920 in his claims for dominion participation and influence in British foreign policy. In 1921 at the time of the conference of prime ministers his series of articles published in the *Times*, under the title *Horizons of Empire*, crossed that limit. Later in the Melbourne *Argus*, during the Washington conference, his communications were probably considerably beyond general opinion in Australia. He was more "Australian" than the Australians. In New Zealand particularly opinion is often more "British" than in England. On this whole matter cf. Eggleston: "The Problem of the British Commonwealth," in *The Nineteenth Century and After*. Vol. 91, pp. 741-55 (May 1922); "A Programme for the British Commonwealth," in *Round Table* (March 1922); and Pollard: "The Dominions and Foreign Policy," *Proceedings of the Institute of International Affairs*, London, 1921.

The last report is that Prime Minister King of Canada is hesitating regarding the appointment of a Canadian minister at Washington. His government is none too stable; and he may decide to send only a Canadian commissioner to be a regular member of the British embassy staff. This might conciliate elements in Canada which are opposed to the plan of separate diplomatic representation. On the other hand many leaders of both the Liberal and Conservative parties are strongly in favor of the appointment of a minister. In Australia

Perhaps the most definite evidence of the influence of local opinion on imperial foreign policy that has come to the surface in a long time is found in the controversy connected with the resignation of the late secretary for India. Mr. Montague undertook to make public (in unconstitutional fashion) the opinion of native India with regard to British policy in the Near East. He was reprimanded by Mr. Lloyd George and lost his position in the Cabinet. Yet in the end of March, 1922 Lord Curzon as foreign secretary carried out at the allied conference at Paris the very policy which had been so strongly urged in India. Such a fact is more significant than mere representation of India at an international conference.

In any event as we observe the play of motive and the shift of opinion we can always realize the increasing mutual interest of the United States and of the British Empire. The methods followed by America and by England have often been different; but important changes in the internal constitution of the British Empire and in the direction of its foreign policies cannot fail to affect the United States. It is to our own continuing interest to watch with sympathetic understanding and friendly view the tangled imperial history which is now in the making.

Mr. Hughes has recently proposed the appointment of an Australian commissioner for Washington. So far this has not met with great favor. The truth seems to be that the dominions, while anxious to maintain the position gained during the war and in connection with the peace negotiations, are still uncertain as to the best method of doing so.

## A UNIFIED FOREIGN SERVICE

SAMUEL MACCLINTOCK

Our government maintains a large and expensive foreign service. The business interests of the country recognize the value of adequate representation abroad and support vigorously measures intended to improve and expand this field. For the fiscal year 1922-23 Congress has increased the appropriations for this branch of the public service while cutting down almost all domestic expenditures.<sup>1</sup>

Our service in the foreign field has only one rival in its completeness and effectiveness, and that naturally is Great Britain's. Before the war comparison was often made with Germany, France, Japan and other nations, and critics could point to individual excellencies in all of these; but they in turn were generous in praise of our service and generally accorded it first rank, especially on its promotional side. The one outstanding weakness of this service at the present time is its lack of unity, resulting in duplicate activities, rivalries, uncertainties to those using the service and needless expense to the taxpayers.

In addition to the two major departments concerned with our foreign relations, there are also a number of other departments, bureaus or agencies of the government which have some foreign activities. Thus, the treasury department in the collection of customs; agriculture, in investigating foreign markets for its products; the bureau of immigration in enforcing its regulations; the war finance corporation in the financing of exports; and the federal reserve board in maintaining government banking connec-

<sup>1</sup> The appropriation for the bureau of foreign and domestic commerce alone for the year 1922-23 is \$1,669,310 and is about 30 per cent larger than for the previous year.

tions abroad all are concerned to some degree with our foreign relations.<sup>2</sup>

On its political side the state department functions through its diplomatic service. Its ambassadors or ministers are accredited to all independent governments which have been recognized by our government. It lies outside the scope of this article to develop this aspect of our service. Suffice it to say that the ambassador or minister as head of the mission, ranks all other regularly appointed agents, and has, therefore, in theory at least, general supervision over all lesser officials of his own branch of the service.

The diplomatic agents have, in the past, confined their efforts largely to political and ceremonial activities, leaving to consular and other agents the development of commercial relations. There is a distinct tendency in recent times, however, for the diplomatic representatives to recognize the basic importance of commerce to political action. There is consequently a decided tendency to take a more active hand in studying business relationships and especially in supervising the work of our commercial representatives in their jurisdiction. Thus our ambassador to France not long ago called into conference all the American consular officials in that country for the purpose of discussing their problems and the best way to meet them. This is a hopeful step in the direction of greater unity in at least one branch of the foreign service.

Diplomatic representatives do not, however, ordinarily inform the department of current commercial movements and do not, therefore, present such facts in reports intended for the public. This is done, so far as the state department is concerned, by the consular officers.

The American consular service numbers some 700 members, all told, including all grades from consul general to student interpreter.<sup>3</sup> They cover every part of the world having Ameri-

<sup>2</sup> For dealing with the debts due us from the Allies a special commission was set up by Congress, composed of the secretaries of the treasury, state and commerce, as well as presidential appointees.

<sup>3</sup> In the spring of 1922 there were 202 American consuls in Europe, 85 in Asia, 23 in Africa, 33 in South America, 11 in Central America, 63 in North America, 23 in the West Indies, and 17 in Australasia.



can interests of any importance. Their work is both commercial and non-commercial. As instances of the latter may be mentioned their duties in connection with shipping, immigration, passport regulations, and in general looking after the interests of their nationals.

The commercial work of consuls is of large importance and embraces every aspect of advancing American interests. This means studying and reporting upon all phases of commercial activity and opportunities. Consular reports are often criticised on the ground of being too general, too broad, or too concerned with trivial details. Counting the shells on the seashore of a particular beach is humorously cited as an instance. Without attempting to weigh at length such criticisms let it be said in passing that consuls are general officers, charged with a multiplicity of duties, and cannot, therefore, reasonably be expected to be highly expert along any one line. This need not, however, preclude the service from having specialists, and as a matter of fact it does include quite a number of such experts at the present time, particularly in economic and financial matters.

Some three or four years ago the state department decided to organize a corps of economic experts, to be known as economist consuls. They were to be attached to the staffs of the larger consulates general in order to conduct or supervise the economic investigations in their districts. There are a number of these economist consuls in the service at the present time but the scheme does not seem to have worked well as a whole and is to be gradually abandoned, according to intimations now current.

The consular force throughout the world collects and transmits information upon practically every conceivable subject having any commercial bearing. These reports are both regular, or called for and occasional, or voluntary. Whether they are timely and valuable to our business interests depends both upon the aptitude of the consul and upon the directions and suggestions that he may receive from Washington. What is timely? What is valuable? To an executive interested in the broad, general aspects of economic movements within a country, the answer to these questions will be one thing; to a technical manager, con-

cerned primarily with a close, detailed knowledge of some particular phase of industry or commerce, the answer will necessarily be quite different. The executive wants a broad, but sound summary; the production or sales manager wants details, specifications, concrete instances. To criticise consular reports without bearing these points in mind is hardly fair.

Reports from its consuls pour into the state department in great volume. They are read in the regional divisions to which they pertain, and the commercial reports are then turned over to the department of commerce for publication, or other use. The state department is thus in the rather anomalous position of collecting commercial information through a great series of reports from its agents around the world but not itself making them public. It turns them over to the department of commerce to use or not, as it thinks best.

A few years ago there developed an important office in the state department—that of the foreign trade advisor. This office was created in order to keep our business interests advised concerning foreign situations of a business character, especially those of a financial nature. In order to work well a personnel different from that of either economist or consul would be required, also a more practical business direction. At any rate, it did not go well and has been greatly curtailed. The office is still maintained but with a skeleton staff, most of the work formerly projected for it having passed to the department of commerce.

The bureau of foreign and domestic commerce, of the department of commerce, is at present organized primarily to promote American trade abroad. The domestic side of the bureau has not been developed much, though Secretary Hoover is making significant gestures in this direction, especially in the important conferences he has been holding with various business bodies. The *Monthly Survey of Current Business*, published jointly by the bureaus of census, standards, and commerce, is a concrete step in this direction.

In the spring of 1922, the foreign field organization of the bureau of foreign and domestic commerce consisted of 13 commercial attaches, 5 acting attaches, 27 general trade commis-

sioners, 13 assistant trade commissioners, and 5 special trade commissioners. It will be noted that this is but a small force in comparison with the consular field force.

Commercial attaches are located in the principal commercial capitals of the world. They have a semi-attachment, of a somewhat sublimated kind, to the diplomatic mission, and are often housed in the embassy or legation. Thus they have diplomatic status, a matter of importance when it comes to dealing with the officials of foreign governments and otherwise acquiring sources of information.

The commercial attache does not report directly to the head of the mission and is not subject to the latter's supervision and direction. He reports directly to the department of commerce at home. In some places the relations between the diplomatic mission and the commercial attache are close and cordial, the former turning over to the latter practically all business of a commercial character, and the latter in turn informing the mission of all that takes place; in other places the relationship is decidedly remote. The two services have different origins, not to say purposes, and there is a strong feeling on the part of the older service that it is quite capable of handling all the work which needs to be done without the assistance of its rather aggressive junior partner.

A general trade commissioner is usually attached to the staff of the commercial attache, in case there is an attache in the country, but otherwise he reports directly to the home office. He is ordinarily assigned to the investigation of some particular trade line, but if there is no commercial attache in the country then the trade commissioner makes the broader and more general reports upon the economic and commercial conditions of the country as a whole.

Special trade commissioners are sent out by the bureau from time to time to make extensive investigations of some particular industry, trade, or development covering a wide area, perhaps a whole continent. Thus, in the spring of 1922, one special trade commissioner was investigating agricultural conditions in Europe; another the field for automotive products in the Far East;

another the possibility of selling American corn products in Europe; still another the field for industrial machinery; and a fifth was preparing a general handbook covering the commercial and industrial conditions in Mexico.

It has been found somewhat difficult to coördinate the work of these special trade commissioners, reporting usually to the home office direct, with that of the regular field force, so that the tendency is drop this feature and to supply this specialized type of investigation from the office of the resident commercial attache.

Some account is needed at this point of the internal organization of the bureau of foreign and domestic commerce before turning at greater length to the collection of information by the field force and its dissemination at home.

Until July 1921, the bureau was organized on the so-called territorial or regional basis. There are five of these divisions at present; namely, western European, eastern European, the near eastern, the far eastern, and the Latin American. Before this article is printed the near eastern will be merged into the eastern European, if recently announced plans are carried through.

These regional divisions share the direction of the field force, receive their reports, digest and prepare for publication those of most general interest. This means information of a broad general economic, financial, and commercial character, while that of a technical character, like tariffs, or of a commodity nature, like rubber, is passed over to the technical or commodity division concerned to handle. The regional divisions, then, that a year ago occupied the full field have now been relieved of all duties of a specialized commodity character and of all promotional work.

In the summer of 1921 an important development in the organization of the bureau took place when a number of commodity divisions were organized. These now include: agricultural implements, automotive products, electrical equipment, foodstuffs, fuel, iron and steel, lumber, industrial machinery, paper, rubber, shoes, hides and leather specialties, and boots, textiles, and sometimes transportation is included. Chemicals, finance and

investments will soon be added, as will experts in international cables and wireless communications; packing for export; and motorcycles.

The organization along commodity lines follows the British precedent of providing specialists who know the wants of their trades and act as coördinating factors between them and the government. Not only are they supposed to know just what their trades would like to have in the way of information from foreign countries but likewise they are expected to get this information out in the quickest and best way, and in the language of the trade itself.

On the whole this new organization plan is working reasonably well. Some industries, especially the highly organized ones with large foreign staffs of their own, have been indifferent and disinclined to coöperate, on the ground that they did not need any help and were not inclined to give any assistance to those outside their own membership; the unorganized industries, on the other hand, have presented even greater problems. So far as internal relationships are concerned it is difficult to have two parallel and coördinate organizations within the same bureau, one covering the field on a territorial basis and the other on a commodity basis. The line is not easy to draw between what is general and what is specific, what is economic and what is commodity; and needless to say the line is difficult to draw between many industries or commodity groups themselves. The direction of this phase of the bureau's work especially should be in the hands of those having some knowledge of business and some experience in executive work. Business men are rightly skeptical about spending time and money in coöperative efforts if the direction of these efforts is in the hands of young men having neither of these qualifications.

There are some in contact with this situation who frankly advocate abolishing the regional divisions entirely and substituting commodity divisions throughout. Others urge the maintenance of the regional divisions as the basis of the organization, with commodity experts crossing all territorial lines but subordinate, nevertheless, to the territorial organization.

In addition to both the regional and commodity divisions of the bureau there are also a number of others of importance. Thus there are the technical service divisions—tariffs, statistics, commercial laws, research, commercial intelligence, and (possibly) transportation; and the general administrative divisions, such as control the home and coöperative offices. The district offices of the bureau are maintained directly by the bureau in the following important home centers of foreign trade: Boston, New York, Chicago, New Orleans, San Francisco, St. Louis, Seattle, and Manila. The cost of their maintenance is about \$100,000 a year. The coöperative offices are conducted in connection with local chambers of commerce, in about 24 less important centers. The purpose back of these local offices is to bring the work of the bureau quickly and effectively into touch with the business interests in each community that can make use of the informational service; also to stimulate interest in these big centers in our foreign trade. Such services as the bureau renders through its local offices is free to the public, and is used chiefly by importers and exporters, chambers of commerce, banks and schools.

A vast amount of information is collected by the government through its foreign representatives, both state and commerce, and poured into the bureau of foreign and domestic commerce for publication or other use. During the year 1921 American consuls thus turned in over 23,500 reports, while commercial attaches and trade commissioners turned in over 5,500. The consulate general in London alone sent in over 1,400.

Of the consular reports referred to, only a few more than 5000 were published in any form. Not all, by any means, were intended for publication or suited to publication, but many, on the other hand, did contain material of value to at least some portion of the public, and were collected and handled at considerable expense to the public. In a recent meeting of the managers of the local and coöperative offices pleas were made that these unpublished reports of interest to their constituents be made available to them for purposes of local consultation. Certain publishers likewise have asked that they be allowed to

abstract these unpublished reports for their magazines. The objection to complying with these requests lies in the expense of striking off an extra copy of the report, there usually being only two copies in the bureau and one in the department of state. It would seem only reasonable, however, to make larger use of these reports or else to discontinue their preparation. The fact that so many of them remain unpublished is said to have caused a widespread feeling of discouragement to spread over the consular force, resulting in a noticeable decrease in morale. Plans for using more of this material are said to have been worked out recently.

The principal forms in which the bureau of foreign and domestic commerce publishes its material are the following: *Commerce Reports*, a weekly magazine of some 50-70 pages; articles prepared for the daily press, some forty or fifty of which are using this material; informational bulletins prepared by the individual divisions and containing material too long or specialized for *Commerce Reports* but not suited, on the other hand, for publication as more permanent work; handbooks and monographs of a rather extended and ambitious nature; a *Monthly Summary of Foreign Commerce and Navigation*; *Trade of the United States with the World*; a *Statistical Abstract*; and a *Survey of Current Business*, published jointly with the bureau of the census and the bureau of standards.

The most serious fault of our foreign commercial service at the present time lies in the duplication and overlapping of functions in the foreign field. In each important capital of the world we maintain an ambassador or minister, a consul general, and in most of them either a commercial attache or trade commissioner, each office with a considerable staff. When it comes to investigating and reporting commercial movements and trade opportunities both state department and commerce department officials are there for exactly the same purpose. They may be very agreeable gentlemen, willing to coöperate, just as the home officers are; but, unfortunately, two foreign services, covering the same general field, make conflict inevitable. It is there by the very nature of the organizations set

up, and the best that the individuals can do is to make the scheme work with as little friction as is inevitable.

That duplication is unavoidable under this scheme may be seen from the following list of topics that commercial attaches are expected to report upon monthly by cable: the exchange situation; the financial situation; foreign trade commodity movements; stocks of imported merchandise on hands; stocks of exported commodities; import and export prices; building and construction; shipping conditions and movements; port conditions—oil and coal; crop conditions; immigration and emigration; labor and wages; activity in foreign and American branches and agencies; cost of living; railroads and railroad construction; concessions granted.

When a commercial attache has covered this wide range of subjects it looks as if a consul stationed at the same place and likewise under instructions to cover everything of importance would have but lean pickings, unless he can beat the other representative to it. From a certain city in central Europe there came in a given period 12 reports from the consul general and 15 from the trade commissioner covering the same subjects. That there are at times unseemly scrambles between members of the two services is an open and regrettable secret.

Officers of the services sometimes get together and attempt to divide the local field between them so as to avoid as much duplication as possible. In one of the important European capitals the following division was recently agreed upon: finances, industry, agriculture, mines and mining, labor, and foreign trade were divided; taxation, transportation, and commodity prices went to the consul general; other prices to the commercial attache; laws and regulations to the consul general, except cables which went to the commercial attache.

The field of private finances was thus divided: banking—increases of capital stock, bank statements, bank rates, new banks, and failures all went to the commercial attache; stock exchanges—shares dealt in, condition of the market, new flotations—went to the consul general; foreign investments in the country to the commercial attache; market prices of the country's securities



and foreign exchange quotations to the consul general; national finances to the consul general, except the budget, which went to the commercial attache.

Such an attempted division of the field shows a commendable effort on the part of the officers concerned to get together and avoid as much duplicate work as possible, but it also shows clearly on its face that the division agreed upon is personal, not topical; it is neither logical nor consistent, though like any other scheme it may work reasonably well as long as the individuals concerned are willing and anxious to coöperate. A fundamental division of the field by the departments at home is needed unless the working arrangements in the field are to be left to personal forces or blind chance.

The theory that both the department of state and the department of commerce should be free at all times to call upon their men for all the information they may need brings out clearly the character of the conflict between the two services, each seeking to cover the whole field and to be complete within itself. Such scope and purposes are by their very nature competitive.

Some important business organizations concerned with our foreign trade have given some study to this situation and one, at least, has made a proposed solution. It is that a commission be appointed by the President for the purpose of administering our foreign service in the interest of the public, both departments being subordinate to its direction. There is some precedent for such a scheme in the British procedure, but the difficulties involved in relieving the heads of the departments from the active direction of their departments are such as to make the proposal of doubtful acceptability.

That there is need of unity of control when it comes to contact with foreign officials, as well as with our own nationals, has been stated from time to time by responsible officials in charge of our foreign affairs. Thus, Secretary Hughes in addressing recently the United States Chamber of Commerce well said: "The effective intertwining of political and economic problems imposes a heavier strain upon the machinery and requires suitable readjustment, but the exigency requiring a unified system

of contact with foreign powers remains exactly the same. In truth many of our economic problems have now the feature that governments, directly or indirectly, are themselves more largely involved in economic projects, and economic problems must of necessity to a larger extent than before be taken up with governments through diplomatic channels. Unity of control of contact with foreign governments is absolutely essential."

From the point of view of the public there should be only one foreign service. It should not be organized in separate departments at all but simply as the one service of the United States government.<sup>4</sup> Business men should not be confused, as is true at present, with uncertainty as to which group of officers in a foreign country looks after certain interests, or is the source of information of a certain kind. The officers themselves should not be subject to the strain of attempting to work a system on a coöperative basis which is fundamentally competitive; and especially should the public be freed from the necessity of paying for duplicate organizations in the foreign field.<sup>5</sup>

<sup>4</sup> The Rogers Bill, of September 1, 1922, provides that all appointments shall be by commission to a class and not to any particular post, and that hereafter the diplomatic and consular services shall be known as the foreign service of the United States.

<sup>5</sup> While theoretically possible, practically the question as to why there should not be one central department in which would be combined all our foreign activities and interests, is never discussed. The Brown committee on the reorganization of government departments is said to contemplate shifting, combining or eliminating a number of bureaus and divisions, within the various departments as now organized, but has never considered, apparently, setting up a separate foreign department, or grouping all foreign activities within one of the existing departments. Perhaps the basic reasons for a continuance along present lines arises from the fact that, functionally, these activities are so dissimilar in character that throwing them together into one department would not create any closer organic relationship, or any better control. Some of these foreign activities are purely commercial and promotional; some are fiscal; some political. They are so wide apart in their fundamental character as to make grouping into a single department of very doubtful value, to say nothing of the difficulty of overcoming long established organization lines and procedure.

## CONSTITUTIONAL LAW IN 1921-1922

### THE CONSTITUTIONAL DECISIONS OF THE SUPREME COURT OF THE UNITED STATES IN THE OCTOBER TERM, 1921

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The central point of interest in the work of the court the past term is supplied by the large attention given to the question of the rights and duties of labor under the law. The problem is approached repeatedly, both from the side of the state's police power and that of national power, and in the field of statutory as well as that of constitutional construction. Important results were also reached in interpretation of the "commerce" clause, both in its aspect as a source of national power and in its aspect—because of the doctrine of the exclusiveness of the power of Congress—as a restriction on the states; but especially in the latter aspect. However, the most interesting single decision of the term for students of constitutional theory and of government was one dealing with the national power of taxation.

#### A. QUESTIONS OF NATIONAL POWER

##### I. NATIONAL TAXATION

##### 1. *The Child Labor Case*

The case just referred to was that of *Drexel Furniture Co. v. Bailey*,<sup>1</sup> in which a nearly unanimous court held void the special tax levied by the Act of February 24, 1919, on the incomes of concerns employing child labor, on the ground that it was not intended to raise revenue but to regulate the employment of children, a matter otherwise reserved to the states. The opinion of the new Chief Justice is so revelatory of his constitutional creed that it deserves special attention.

Summarizing the provisions of the measure under review, the Chief Justice makes out a very convincing case for its regulatory inten-

<sup>1</sup> Decided May 15.

tion,<sup>2</sup> but his advantage is somewhat fortuitous, since a more drastic measure would have omitted most of the features he dwells upon, while in principle the act can by no means be considered as an extravagance even regarded as a purely revenue-raising measure. Concerns which

<sup>2</sup> "It [the act]," he writes, "provides a heavy exaction for a departure from a detailed and specified course of conduct in business. That course of business is that employers shall employ in mines and quarries, children of an age greater than sixteen years; in mills and factories, children of an age greater than fourteen years; and shall prevent children of less than sixteen years in mills and factories from working more than eight hours a day or six days in the week. If an employer departs from this prescribed course of business, he is to pay to the government one tenth of his entire net income in the business for a full year. The amount is not to be proportioned in any degree to the extent or frequency of the departures, but is to be paid by the employer in full measure whether he employs five hundred children for a year, or employs only one for a day. Moreover, if he does not know the child is within the named age limit, he is not to pay; that is to say it is only where he knowingly departs from the prescribed course that payment is to be exacted. Sciencers are associated with penalties not with taxes. The employer's factory is to be subject to inspection at any time not only by the taxing officers of the Treasury, the Department normally charged with the collection of taxes, but also by the Secretary of Labor and his subordinates, whose normal function is the advancement and protection of the welfare of the workers. In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?"

And again: "Taxes are occasionally imposed in the discretion of the legislature on proper subjects with the primary motive of obtaining revenue from them, and with the incidental motive of discouraging them by making their continuance onerous. They do not lose their character as taxes because of the incidental motive. But there comes a time in the extension of the penalising features of the so-called tax when it loses its character as such and becomes a mere penalty, with the characteristics of regulation and punishment. Such is the case in the law before us. Although Congress does not invalidate the contract of employment, or expressly declare that the employment within the mentioned ages is illegal, it does exhibit its intent practically to achieve the latter result by adopting the criteria of wrongdoing, and imposing its principal consequence on those who transgress its standard."

His contention, however, that, "Grant the validity of this law, and all that Congress would need to do hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the states have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it" cannot be conceded. See discussion of The Future Trading Act just below.

employ child labor occupy a degraded plane of competition and presumably enjoy special profits in consequence; why then, should not these profits be subject to special exactions by the taxing-power, whether national or local?

But what is far more important, the Chief Justice's evaluation of the purpose of the act does not touch the really serious difficulties in the way of holding it void merely because of that purpose. Precisely the same attack was made some years ago against the tax on yellow oleomargarine, and was characterized by the court, in the case of *McCray v. United States*,<sup>3</sup> as amounting to "the contention that under our constitutional system, the abuse by one department of government of its lawful powers is to be corrected by the abuse of its powers by another department." "The decisions of this Court," the opinion continued, "from the beginning lend no support whatever to the assumption that the judiciary may restrain the exercise of lawful power on the assumption that a wrongful purpose or motive has caused the power to be exerted."

The Chief Justice would fain distinguish the *McCray* and similar cases from the one at bar, but is unable to do so convincingly, since he is unable to deny that the regulatory purpose of Congress was fully as palpable in those cases as in this. Indeed, as his own references show, the court took cognizance of the regulatory purpose of the tax on state bank issues which was involved in *Veazie v. Fenno*,<sup>4</sup> but without suggesting that this at all affected the status of the measure as an excise. Nor should we overlook in this connection the most important chapter in the history of national taxation. Probably Congress has never enacted a customs revenue which did not contain whole schedules designed, not for raising revenue but for their regulatory effect; yet such duties have always been treated as "duties" in the sense of the Constitution, and as subject to the requirement that they be "uniform throughout the United States."<sup>5</sup> Then finally, the decision directly collides with Chief Justice Marshall's dictum in *McCulloch v. Mary-*

<sup>3</sup> 195 U. S. 27; and cases there cited.

<sup>4</sup> 8 Wall. 533. See, e.g. the court's remarks in *Flint v. Stone Tracy Co.*, 220 U. S. 107.

<sup>5</sup> "The absolute power to levy taxes," says Story, "includes the power in every form in which it may be used, and for every purpose to which the legislature may choose to apply it. This results from the very nature of such an unrestricted power. *A fortiori* it might be applied by Congress to purposes for which nations have been accustomed to apply it." The entire paragraph should be read. *Commentaries*, § 965. For the opposing view, which was first formulated by the "tariff for revenue" school, see Cooley's *Principles of Constitutional Law* (3rd ed.), p. 58.

land,<sup>6</sup> which has since come to underly so much constitutional law, that "the power to tax involves the power to destroy"—that, in other words, the power to tax involves the power to regulate the subject-matter of the tax by taxing it even to the point of destroying it.

It may, therefore, be said of this decision, first, that it rests upon a view of the taxing power which had not hitherto found its way into constitutional law; and, secondly, that it infers a claim which the court had hitherto repudiated, of power on its part to overturn for alleged unconstitutional purpose acts of Congress otherwise valid. For the first time in the history of judicial review legislative motive is made a test of legislative action, and any effort by Congress to bring within its control matters normally falling to the states alone raises the question of valid motive.

But is it true that the Constitution intends any such apportionment of the purposes of government, as Chief Justice Taft assumes, between the national government and the states?<sup>7</sup> That the national government is, in peace time, so far as domestic affairs are concerned, mainly a government of enumerated powers, is of course axiomatic; but does that fact signify that it may not use the powers clearly belonging to it to promote the larger ends of good government everywhere? This very question was raised in an early case with reference to Congress's power over commerce, and answered by the court to which it was addressed as follows: this power "is not to be confined to the adoption of measures exclusively beneficial to commerce itself, or tending to its advantage; but in our national system, as in all modern sovereignties, it is also to be considered as an instrument for other motives of general policy and interest."<sup>8</sup> The same principle is implied for all of Congress's

<sup>6</sup> 4 Wheat. 316.

<sup>7</sup> That he does assume such an apportionment is proved by his quotation of the following passage from C. J. Marshall's opinion in *McCulloch v. Md.*: "Should Congress, in the execution of its powers, adopt measures which are prohibited by the Constitution, or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land."

The quotation is entirely misapplied. Marshall is here discussing the powers of Congress under the "necessary and proper" clause, and is saying that these must have some relation to its substantive powers; he is not suggesting that the latter were granted for only limited purposes.

<sup>8</sup> *U. S. v. the Brigantine William*, *Federal Cases*, No. 16,700. This is the famous "Embargo Case," and was decided, in 1808, by Judge John Davis of the United States district court of Massachusetts. "It was perceived," Judge Davis's opinion continues, "that, under the power to regulate commerce, Con-

powers in the Preamble itself; and indeed, was invoked by the court not many years since in sustaining the Mann White Slave Act.<sup>9</sup>

While, therefore, the decision in the Drexel case marks certain innovations upon our constitutional law, it also signalizes in one way a reaction, to wit, toward the older theory of a federal balance, in contradistinction to the modern one of federal coöperation,—a deduction which is confirmed by Chief Justice Taft's invocation of the Tenth Amendment. Yet other decisions at this same term, decisions in which the Chief Justice again speaks for the court, show conclusively that—as Madison phrased it—"interference with the powers of the states is no criterion of the powers of Congress."<sup>10</sup> There appears, in fact, to be something of a discrepancy between the court's reading of the Constitution when railway rates are concerned and its reading of the same instrument when child labor is concerned—which, however, becomes less surprising when we recall the difficulties which Congress also encountered in asserting its power in the former field at first.<sup>11</sup>

gress would be authorized to abridge it, in favor of the great principles of humanity and justice. Hence the . . . . clause, in the Constitution . . . . to interdict a prohibition of the slave trade, until 1808." Compare with these words the following passage from C. J. Taft's opinion, in comment on *Hammer v. Dagenhart*, 247 U. S. 251, in which the first Child Labor Act was set aside:

"The analogy of the Dagenhart case is clear. The congressional power over interstate commerce is, within its proper scope, just as complete and unlimited as the congressional power to tax; and the legislative motive in its exercise is just as free from judicial suspicion and inquiry. Yet when Congress threatened to stop interstate commerce in ordinary and necessary commodities, unobjectionable as subjects of transportation, and to deny the same to the people of a state, in order to coerce them into compliance with Congress's regulation of state concerns, the court said this was not in fact regulation of interstate commerce, but rather that of state concerns, and was invalid."

This is the clearest intimation that we have had that the Dagenhart case stands for the idea that Congress may regulate commerce only from the point of view of benefiting the commerce. See next note.

<sup>9</sup> *Hoke v. U. S.*, 227 U. S. 308, where it is said: "Our dual form of government has its perplexities, state and nation having different spheres of jurisdiction, as we have said; but it must be kept in mind that we are one people; and the powers reserved to the states and those conferred on the nation are adapted to be exercised, whether independently or concurrently, to promote the general welfare, material and moral." See further note 85.

<sup>10</sup> *Annals of Congress*, II, col. 1891. See the discussion of the railway rate cases, *infra*.

<sup>11</sup> See, e.g., J. Harlan's statement in his dissenting opinion in the Alabama Midland Ry. case, 168 U. S. 176, that the court had rendered the interstate commerce commission "a useless body for all practical purposes." This was in 1898.

## 2. *The Future Trading Act; Tax Penalties*

At the same sitting the court also pronounced void, in *Wallace v. Hill*,<sup>12</sup> certain sections of the Future Trading Act of August 24, 1921, whereby Congress attempted a wholesale regulation of boards of trade through subjecting them to the supervision of the secretary of agriculture and an administrative tribunal consisting of that secretary, the secretary of commerce, and the attorney general, and imposed upon boards not coming under the control thus set up a special tax of twenty cents a bushel on all contracts for the sale of grain for future delivery. Inasmuch as the court found the act to transcend the powers of Congress under the commerce clause—a point about which, however, there is considerable room for debate—it properly concluded that the system of regulation created by the act was void and that the alternative tax fell with it. The *Drexel* case is cited as authority for the decision, but it is clear that the two cases hardly occupy a common footing. In the one the only regulation involved was such as would result from the tax imposed; in the other detailed regulations were directly enacted or authorized which were to be alternative to the tax; in the one, an act of Congress, otherwise valid, was banned for a supposed purpose, in the other for its actual content.<sup>13</sup>

A third case, *Lipke v. Lederer*,<sup>14</sup> involved section 35 of the Volstead Act, which provided that where there was "evidence" of illegal manufacture or sale of liquor, against "the person responsible" should be assessed "a tax" double the amount provided by law previous to the passage of the act, together "with an additional penalty of five hundred dollars on retail dealers," etc. This section was held to impose a penalty in the guise of a tax, without trial by jury or due process of law and so to be void. While there is probably no rule of constitutional law which requires that taxes must proceed from a benevolent or approving frame of mind toward businesses taxed, for the government to

<sup>12</sup> Decided May 15.

<sup>13</sup> It may be argued perhaps that by the scheme of the Future Trading Act immunity from regulation was exchanged for immunity from taxation. Undoubtedly, certain constitutional rights and immunities may be waived by the individual, but not those, it is submitted, which are incidental to the maintenance of the structure of the government and the distribution of powers effected by the Constitution, for in such cases the individual right is only a resultant of something more fundamental. In this connection compare two cases decided this term of court: *Terral v. Burke Construction Co.*, discussed *infra*, under B., III, and *Pierce Oil Corp. v. Phoenix Refining Co.* (May 15).

<sup>14</sup> Decided June 5.



derive revenue from a business which is outlawed would be a strange proceeding, to be sure—about as strange as for it to engage in the same business on the high seas. The decision seems well grounded.

### 3. *Income and Estate Taxes*

Two cases arose under the Sixteenth Amendment. In one the court extended the benefits of the decision in *Eisner v. Macomber*<sup>15</sup> to the proceeds of a sale by a stockholder of his preferential right to participation in a stock-dividend;<sup>16</sup> in the other it refused to do so, in the case of stock which was issued in a new corporation against the accumulated surplus of a pre-existing one, and was distributed in pursuance of a plan of reorganization *pro rata* among the stockholders of the latter.<sup>17</sup> The distinction between the two cases is somewhat difficult to grasp.

Another case informs us that the Estate Tax of September 8, 1916, may reach, as part of the net value of an estate, state and municipal bonds;<sup>18</sup> while a third vindicates the right of Congress to tax persons and property within the District of Columbia in defiance of the maxim that "taxation without representation is tyranny."<sup>19</sup>

## II. REGULATION OF COMMERCE

### 1. *The Railway Rate Cases*

Several years ago, in the Shreveport case,<sup>20</sup> the Supreme Court sustained the right of the interstate commerce commission to order an increase of certain intrastate rates in Texas which, though they had been authorized by the state railway commission, were found to discriminate against persons and localities engaged in interstate commerce;

<sup>15</sup> 252 U. S. 189; discussed in this *Review*, XVI, p. 635 ff.

<sup>16</sup> *Miles v. Safe Deposit and T. Co.* (May 29).

<sup>17</sup> *U. S. v. Phellis* (Nov. 21); also, *Rockefeller v. U. S.*, which was decided the same day, and in which the facts were substantially the same. J. J. McReynolds and Van Devanter dissented, on the basis of *Eisner v. Macomber*.

<sup>18</sup> *Greiner v. Lewellyn* (Apr. 10). In differentiating the case from a tax on income derived from state and municipal bonds, J. Brandeis speaks of the latter as "a direct tax," which flies directly in the face of what was said in the *Brushaber* case, 240 U. S. 1.

<sup>19</sup> *Heald v. D. C.* (May 15): "There is no constitutional provision which so limits the power of Congress that taxes can be imposed only on those who have political representatives." A series of cases, decided May 1st, rule that the Estate Tax of 1916 does not extend to trusts created before its passage.

<sup>20</sup> 234 U. S. 342.

and in doing so the court laid down the following principle: "Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress and not the state that is entitled to prescribe the final and dominant rule." Relying on this rule, which is an obvious deduction from the "commerce" clause read in connection with the "necessary and proper" clause, Congress, by section 416 of the Transportation Act of 1920, authorized the commission generally to remove "any undue, unreasonable, or unjust discrimination against interstate or foreign commerce," in pursuance whereof the commission presently followed an order increasing interstate passenger and freight rates with one—among others—fixing the minimum passenger rate in Wisconsin at 3.6 cents per mile; and this notwithstanding that a state statute set the maximum fare for passengers in that state at two cents per mile.

In the case of the Railroad Commission of Wisconsin v. C. B. & Q. R. R. Co.<sup>21</sup> the validity of this order was assailed, not only by Wisconsin but also twenty other states, whose attorneys general filed briefs as *amici curiæ*, but all to no avail. In *New York v. United States*<sup>22</sup> the same result was reached with regard to similar orders affecting rates of transportation within that state, and the further point was established, again upon ample authority, that the power of the interstate commerce commission is in no wise limited by the existing charter obligations of carriers subject to its jurisdiction. On the other hand, in *Texas v. Eastern Texas Ry. Co.*,<sup>23</sup> an order of the commission authorizing the company to discontinue its purely intrastate business was overruled on the ground that, since the road lay wholly within the state and was not part of another line, its continued operation could not be of more than local concern. Whether, apart from the commission's order, the company was entitled to abandon as unprofitable a service which it had undertaken in its charter to perform, was not decided.<sup>24</sup>

## 2. National Regulation of Stockyards

*Stafford v. Wallace*<sup>25</sup> sustains the Packers and Stockyards Act of August 15, 1921, by which Congress authorized the secretary of

<sup>21</sup> Decided Feb. 27.

<sup>22</sup> Same date.

<sup>23</sup> Decided Mar. 13.

<sup>24</sup> Cf. *Brooks-Scanlon Co. v. R.R. Comm.*, 251 U. S. 396, and *Bullock v. R.R. Comm.*, 254 U. S. 513.

<sup>25</sup> Decided May 1.

agriculture to regulate rates and charges of the Chicago packers with a view to preventing unfair practices, monopoly, control of prices, etc. Reciting the conceded fact that "of all the live stock coming into the Chicago stockyards and going out, only a small percentage, less than 10 per cent, is shipped from or into Illinois," the Chief Justice said: "Stockyards are not a place of rest or final destination;" they "are but a throat through which the current flows, and the transactions which occur therein are only incidental to this current from the West to the East and from one state to another." The act thus falls well within accepted principles<sup>26</sup>—notwithstanding which Justice McReynolds dissented.

### III. GOVERNMENT OF TERRITORIES

Two cases arose under this heading. One informs us that the word "state" as used in the "no preference" clause of Article I, section 9 of the Constitution does not include "incorporated" and "organized" territories such as Alaska;<sup>27</sup> the other, that the act of Congress extending citizenship to the inhabitants of Porto Rico did not make that island an "incorporated" territory to which, by previous decisions of the court, the provisions of the Sixth Amendment with reference to trial by jury are applicable.<sup>28</sup> In short, just how a territory becomes "incorporated" and what results from the metamorphosis in the way of constitutional guaranties are still unanswered questions.

### IV. THE CONSTITUTION-AMENDING POWER

In *Leser v. Garnett*,<sup>29</sup> a case coming up from Maryland, the recently adopted Nineteenth Amendment was assailed as destroying that state's autonomy by effecting a great addition to its electorate without its consent. A unanimous court answered through Justice Brandeis that the Amendment "is in character and phraseology precisely similar to

<sup>26</sup> The decision does not, in fact, go beyond *Swift & Co. v. U. S.*, 196 U. S. 375, where certain practices of the great packers were condemned under the Sherman Act. The principle involved is indicated by the caveat quoted from the opinion in *U. S. v. Ferger*, 250 U. S. 199, that it is a mistake to assume "that the power of Congress is to be necessarily tested by the intrinsic existence of commerce in the particular subject dealt with, instead of by relation of that subject to commerce and its effect upon it."

<sup>27</sup> *Alaska v. Troy* (Feb. 27).

<sup>28</sup> *Balzac v. P. R.* (Apr. 10).

<sup>29</sup> Decided Feb. 27.

the Fifteenth Amendment," that the same method of adoption was pursued for each, and that the validity of the Fifteenth Amendment had been "recognized and acted on for half a century" and was no longer open to question. A second contention that certain provisions in the constitutions of some of the states listed by the secretary of state as having ratified the Nineteenth Amendment rendered the alleged ratifications inoperative was answered by reference to *Hawke v. Smith*<sup>30</sup> and the proposition there established that the function of a state legislature in ratifying a proposed amendment to the national Constitution, being derived from the Constitution itself, "transcends any limitations sought to be imposed by the people of a state." However, it was further argued that, at any rate, the legislatures must act as legislatures, and so in accordance with their rules of procedure and that this had not been done in all of the states. The court, following a familiar rule,<sup>31</sup> refused to go into the question. Inasmuch, it said, "as the legislatures of Tennessee and West Virginia"—the two states concerned—"had power to adopt resolutions of ratification, official notice to the secretary, duly authenticated, that they had done so, was conclusive upon him, and being certified to by his proclamation, is conclusive on the courts."—In view of all which, future assaults on regularly adopted constitutional amendments seem unlikely.

#### V. EXECUTIVE POWER

##### 1. *The Power of Removal*

Light—some of it familiar—was shed on the power of removal by a number of cases. An order of the President cannot reinstate a person in office where the power of appointment and removal is vested by statute in the secretary of the treasury, but can only restore him to eligibility for reappointment.<sup>32</sup> The power to remove is included in the power to appoint where the latter is conferred by statute and the statute does not otherwise provide.<sup>33</sup> Statutes, however, which limit the President's power to dismiss officers from the army and navy do not affect his power to remove such officers when it is exercised by and with the advice and consent of the Senate, and such advice and consent is given

<sup>30</sup> 253 U. S. 221 and 231.

<sup>31</sup> See in this connection *Haire v. Rice*, 204 U. S. 291; also *Marshall Field & Co. v. Clark*, 143 U. S., 649, and cases there cited.

<sup>32</sup> *Eberlein v. U. S.* (Nov. 7).

<sup>33</sup> *Norris v. U. S.* (Nov. 7).

when the Senate ratifies a nomination to the vacated post.<sup>34</sup> Furthermore, the Senate, in confirming an appointment, is exercising not a judicial but an executive function, wherefore it is free to accept a nomination by the President as assurance that a vacancy existed to which an appointment could be validly made.<sup>35</sup>

## 2. *Miscellaneous*

Various other phases of "executive power" also received illustration. In *Ponzi v. Fessenden*<sup>36</sup> it was held that the attorney general had the right, even though without express statutory authorization, to consent to the temporary transfer of a federal prisoner from his place of confinement to a state court, there to give testimony. "In such matters," said the court, "he represents the United States and may, on its part, practice the comity which the harmonious and effective operation of both systems of courts requires." The decision is based on *in re Neagle*.<sup>37</sup> Another case invokes the principle that authority vested in the President by Congress may be delegated by him to the head of the proper executive department, and when exercised by latter is in contemplation of the law exercised by the President.<sup>38</sup> In a third case certain regulations by the secretary of the treasury were set aside as not in accordance with law.<sup>39</sup>

## VI. JUDICIAL POWER

### 1. *General Attributes*

In *Howat v. Kansas*,<sup>40</sup> a recalcitrant labor chief who had been proceeding on the assumption that every man is his own supreme court, was informed that a decision of a state court which sustained contempt proceedings for the violation of an injunction was not reviewable by the United States Supreme Court, on the ground that the statute under

<sup>34</sup> *Wallace v. U. S.* (Feb. 27).

<sup>35</sup> Same parties (Apr. 10).

<sup>36</sup> Decided Mar. 27.

<sup>37</sup> 135 U. S. 1.

<sup>38</sup> *U. S. v. Weeks* (May 29). The leading cases are *Wilcox v. Jackson*, 13 Pet. 498, and *Williams v. U. S.*, 1 How. 290.

<sup>39</sup> *International R'y. Co. v. Davidson* (Jan. 30). A leading case in this connection is *Morrill v. Jones*, 106 U. S. 466. *Kern River Co. v. U. S.* (Nov. 21), emphasizes the respect to be paid a construction put upon a statute "by the head of the Department charged with administering it."

<sup>40</sup> Two cases, decided Mar. 13. Compare *Union Tool Co. v. Wilson* (May 15).

which the injunction had issued violated the Constitution; if an injunction is erroneous, the error can be tested only by appeal from it, not by violation of it. Thus the court lost the opportunity for the time being of passing upon the Kansas Industrial Relations Court Act. Although the decision was ostensibly in interpretation of section 237 of the Judicial Code, its real basis seems rather to be the idea that judicial power carries with it power on the part of courts to punish contempt of their processes.

Conversely, *Fairchild v. Hughes*<sup>41</sup> is instructive of certain intrinsic limitations to judicial power. It tells us that the right which we enjoy as good citizens to require that the government be administered according to the law does not of itself entitle us to start proceedings in the federal courts for the purpose of obtaining a judicial decision as to the constitutionality of a pending statute or constitutional amendment. Or, as it was phrased in another case, "It is only when rights, in themselves appropriate subjects of judicial cognizance, are being, or about to be, affected prejudicially by the application or enforcement of a statute, that its validity may be called in question by a suitor and determined by an exertion of the judicial power."<sup>42</sup>

## 2. Immunity; Maritime Jurisdiction

Three cases illustrated the original jurisdiction of the Supreme Court in controversies between states—two of them boundary disputes<sup>43</sup> and the other a dispute over water rights.<sup>44</sup> In two cases, however, states which sought the intervention of the court against orders of the interstate commerce commission were informed that they must resort to the proper United States district court, since the national government, which is by statute made a necessary party to such suits, had consented to be sued only in such court.<sup>45</sup>

But if the government itself is immune from suit except when it consents thereto, how about its corporate agents? As the United States Shipping Board Emergency Fleet Corporation learned to its cost, they occupy precisely the same footing as personal agents in this regard.<sup>46</sup> The contrary notion, said Justice Holmes, speaking for the

<sup>41</sup> Decided Feb. 27.

<sup>42</sup> *Texas v. I. C. C.* (Mar. 6). See also *Muskrat v. U. S.* 219 U. S. 346.

<sup>43</sup> *Georgia v. S. C.* (Jan. 30), and *Oklahoma v. Tex.* (May 1).

<sup>44</sup> *Wyoming v. Colo.* (June 5).

<sup>45</sup> *North Dakota v. Chic. & N. W. R'y Co.* (Jan. 23) and *Texas v. I. C. C.* (Mar. 6).

<sup>46</sup> *Sloan Shipyards Corp. v. U. S. S., Bd. E. F. Corp.* (May 1).

court, would be "a very dangerous departure from one of the first principles of our system of law." The sovereign is superior to suit, "but the agent because he is agent does not cease to be answerable for his acts."<sup>47</sup> To property used by it, on the other hand, the government can impart its immunity; wherefore, no action *in rem* lies against a vessel after release by the United States for a tort committed while in its service.<sup>48</sup>

Several cases prove that the rule laid down in *Knickerbocker Ice Co. v. Stewart*<sup>49</sup> is not to be enforced literally, but is to be mitigated by the inquiry in each instance whether the operation of a state law within the field of the admiralty jurisdiction would "work material prejudice to the characteristic features of the general maritime law."<sup>50</sup>

#### VII. FREEDOM OF PRESS; FRAUD ORDERS

In *Leach v. Carlile*<sup>51</sup> the court sustained a "fraud order" of the postmaster general against the vendor of a panacea called "Organo Tablets," which were advertised as "recommended and prescribed by leading physicians throughout the civilized world for nervous weakness, general debility . . . sleeplessness, run-down system," and all the rest of it. Justice Holmes, in a dissenting opinion, concurred in by Justice Brandeis, gallantly shivered another lance for his beloved freedom of speech and press, admitting inferentially, however, that he had been somewhat remiss in the past where cases like the one at bar had been concerned. "I do not suppose," said he, "that anyone would say that freedom of written speech is less protected by the First Amendment than the freedom of spoken words. Therefore I cannot understand by what authority Congress undertakes to authorize anyone to determine in advance . . . that certain words shall not be uttered." But the words involved in this case were uttered in advance of any official action and many times, nor was the utterer penalized merely for that; and that there is a difference between spoken and written words sometimes is shown by the law of libel. Also, it may be suggested, that when

<sup>47</sup> Citing *Osborn v. Bank of U. S.*, 9 Wheat 738, and *United States v. Lee*, 106 U. S. 196.

<sup>48</sup> *United States v. Thompson* (Jan. 3). J. McKenna, speaking for himself and J. J. Day and Clarke in dissent, has much the better argument from authority. See *The Siren*, 7 Wall. 152.

<sup>49</sup> 253 U. S. 149; see also *Southern Pacific R'y Co. v. Jensen*, 244 U. S. 205.

<sup>50</sup> *Western Fuel Co. v. Garcia* (Dec. 5), followed by *Grant Smith-Porter Ship Co. v. Rhode* (Jan. 3), and *State Industrial Comm. v. Nordenholt Corp.* (May 29).

<sup>51</sup> Decided Feb. 27.

one tries to coin his freedom of utterance into dollars and cents by addressing himself directly to the credulity of his fellows, he may rightly be subjected to a special scrutiny, freedom of utterance being designed primarily for the public benefit and as an aid in the processes of popular government.

#### VIII. THE FIFTH AMENDMENT; CHINESE

• Much the most important case in this connection was that of *Ng Fung Ho v. White*,<sup>52</sup> where the rule is laid down that Chinese residents within the United States who assert a claim of citizenship supported by evidence sufficient, if believed, to sustain it, may not be deported by executive order, but are entitled by due process of law to a judicial trial of this claim. The doctrine of the *Ju Toy* case<sup>53</sup> is thus confined to Chinese who are in legal contemplation without the borders of the United States and are seeking entry therein on the ground of citizenship.<sup>54</sup>

The punishment of a person for an act done in violation of the law when ignorant of the facts making it so is not necessarily a denial of "due process of law."<sup>55</sup> A crime punishable by hard labor is necessarily curious to relate, "an infamous crime," and one, therefore, which must be charged by indictment.<sup>56</sup> Property, the value of which has been substantially destroyed in consequence of the erection of public works, is ordinarily "taken," but where no human knowledge could have foreseen the destruction this rule does not apply.<sup>57</sup> When the government uses a patented article with the owner's consent, it is obliged to pay him "just compensation."<sup>58</sup>

<sup>52</sup> Decided May 29.

<sup>53</sup> *United States v. Ju Toy*, 198 U. S. 253.

<sup>54</sup> The position of such Chinese is akin to that of people of color who were arrested as fugitive slaves, before the Civil War. See *Prigg v. Pa.*, 16 Pet. 539.

<sup>55</sup> *United States v. Balint* (Mar. 27).

<sup>56</sup> *United States v. Moreland*, decided Apr. 17. Moreland had been sentenced to the District of Columbia workhouse for six months at hard labor, his offence being failure to support his children. The statute under which he was convicted designated this offence a "misdemeanor." The decision seems to be based on a strained interpretation of *Wong Wing v. U. S.*, 163 U. S. 228. J. Brandeis filed a dissenting opinion for himself, the Chief Justice, and J. Holmes.

<sup>57</sup> *John Horstmann Co. v. U. S.* (Nov. 21).

<sup>58</sup> *United States v. Bethlehem Steel Co.* (Apr. 10). The right of Congress to ratify an unauthorized collection of duties in certain circumstances was sustained in *Rafferty v. Smith, Bell & Co.* (Dec. 5). For a different result in closely parallel facts, see *Forbes Pioneer Boat Line v. Bd. of Commrs.* (Apr. 10).



## IX. STATUTORY CONSTRUCTION

1. *The Sherman and Clayton Acts and Labor*

A decision of interest not only to students of the labor problem but also to those who have pondered the question of the nature of corporations, whether they are "real" or only fictions of the law, is that in *United Mine Workers of America v. Coronado Coal Co.*,<sup>59</sup> which yields the novel, not to say, revolutionary doctrine—so far as American law is concerned—that unincorporated labor unions are suable in their own names in the federal courts for their acts, and that their funds are subject to execution in actions for torts committed by their authorization during strikes. The decision is based both on the language of section 7 of the Sherman Act and on general grounds.<sup>60</sup> On this particular occasion the

<sup>59</sup> Decided June 5.

<sup>60</sup> "At common law," the opinion reads, "an unincorporated association of persons was not recognized as having any other character than a partnership in whatever was done, and it could only sue or be sued in the name of its members, and their liability had to be enforced against each member. . . . But the growth and necessities of these great labor organizations have brought affirmative legal recognition of their existence and usefulness and provisions for their protection, which their members have found necessary. Their right to maintain strikes, when they do not violate law or the rights of others, has been declared. The embezzlement of funds by their officers has been especially denounced as a crime. The so-called union label, which is a quasi trademark to indicate the origin of manufactured product in union labor, has been protected against pirating and deceptive use by the statutes of many states, and in many states authority to sue to enjoin its use has been conferred on unions. They have been given distinct and separate representation and the right to appear to represent union interests in statutory arbitrations, and before official labor boards. . . . More than this, equitable procedure adapting itself to modern needs has grown to recognize the need of representation by one person of many, too numerous to sue or be sued . . . ; and this has had its influence upon the law side of litigation, so that, out of the very necessities of existing conditions and the utter impossibility of doing justice otherwise, the suable character of such an organization as this has come to be recognized in some jurisdictions, and many suits for and against labor unions are reported in which no question has been raised as to the right to treat them in their closely united action and functions as artificial persons, capable of suing and being sued. It would be unfortunate if an organization with as great power as this international union has in the raising of large funds and in directing the conduct of 400,000 members in carrying on, in a wide territory, industrial controversies and strikes, out of which so much unlawful injury to private rights is possible, could assemble its assets to be used therein free from liability for injuries by torts committed in the course of such strikes. To remand persons injured to a suit against each of the 400,000 members to recover damages and to levy on his share of the strike fund would be to leave them remediless." The *Taff Vale* decision is invoked; and a marginal note furnishes an extended reference to legislation by the states protective of labor unions.

national organization of miners was held not liable because it was not shown to have authorized the acts complained of by the coal company; and the local union was held to be exempt from suit in the federal courts because, on account of their local effect, the acts complained of did not interfere with interstate commerce; but it is inferred that if the strike had been called by the national organization its scope would have made any illegal acts connected with it violative of the Sherman Act, and further, that if the coal involved had been considerable enough in quantity to affect interstate prices, the local union could have been held under the act for any wrongful deeds. The case has great importance both as an interpretation of the national Anti-Trust Acts and as a hint to the state courts, when handling cases in which claims against labor organizations may be based on common law principles. If the suggestion is adopted, we shall soon hear, for example, of labor organizations being sued for procuring breaches of contract. It should be added that the decision, though a striking instance of judicial legislation, was rendered by a unanimous court.

Already, earlier in the term, the court had laid down, in *American Steel Foundries v. Tri-City Central Trades Union Council*,<sup>61</sup> certain important propositions supplementary to the decision last term in the *Duplex* case,<sup>62</sup> in interpretation of section 20 of the Clayton Act: (1) the "irreparable injury" for which injunctive relief is permitted by this section, even in cases of disputes between employers and employees, includes injuries to the business of an employer; (2) "the peaceful" means of persuasion permitted by the section do not include means leading inevitably to intimidation or obstruction, and whether the means adopted in any particular instance are attended by such danger is a question for the judge, who has heard witnesses and familiarized himself with the circumstances of the case; (3) the members of a local union and the union itself, though not directly involved in a dispute between an employer and employees, have a sufficient interest in the wages paid the latter to entitle them to use lawful and peaceful persuasion in behalf of striking employees. Furthermore, we are informed generally, that section 20 introduced no new principle "into the equity jurisprudence of the federal courts," but is "merely declaratory of what was the best practice always."<sup>63</sup>

<sup>61</sup> Decided Dec. 5.

<sup>62</sup> *Duplex Printing Co. v. Deering*, 254 U. S. 443.

<sup>63</sup> This is in flat conflict with J. Pitney's statement in the *Duplex* case that § 20 "imposes an exceptional and extraordinary restriction upon the equity

Unquestionably these two decisions signalize a new era in the effort to extend the rule of law into the field of industrial controversy. "Government by injunction," which sprang full-panoplied from the judicial bosom in the decision in the Debs case,<sup>64</sup> has not proved a success in all respects; yet the only tolerable escape from it was the one which the Coronada decision opens up, to wit, legal responsibility on the part of organized labor. And both cases prewise a long line of decisions in which the right of labor, the rights of employers, and the rights of the public will undergo definition in relation to each other by the characteristic judicial process of exclusion and inclusion.

### *2. Anti-Trust Decisions*

Of "anti-trust" decisions under the Sherman Act or the Clayton Act, or both together, one condemned the so-called "open competition" plan of the American Hardware Association,<sup>65</sup> another pronounced unlawful the endeavors of the Beech-Nut Packing Company to thrust a schedule of resale prices upon dealers in its product,<sup>66</sup> a third held void a contract whereby certain vendors of patterns agreed with the manufacturers not to sell other makes,<sup>67</sup> a fourth set aside the famous "tying leases" of the Shoe Machinery Trust, whereby the trust utilized its control through patents of certain kinds of machinery to compel lessees thereof to hire other needed machinery from it,<sup>68</sup> and a fifth decreed that the Southern Pacific Company must surrender control of the Central Pacific Company's lines.<sup>69</sup> Lastly it was determined that organized baseball, though involving considerable interstate travelling, is not "interstate commerce" within the meaning of either of the Anti-trust Acts.<sup>70</sup>

powers of the courts of the United States and upon the general operation of the Anti-Trust Laws." The practical effect of this difference of point of view may appear in future cases.

<sup>64</sup> 158 U. S. 564.

<sup>65</sup> American Column & Lumber Co. v. U. S. (Dec. 19).

<sup>66</sup> Federal Trade Commission v. Beech-Nut Packing Co. (Jan. 3).

<sup>67</sup> Standard Fashion Co. v. Magrane-Houston Co. (Apr. 10).

<sup>68</sup> United Shoe Machinery Corp. v. U. S. (Apr. 17).

<sup>69</sup> United States v. So. Pac. Co. (May 29).

<sup>70</sup> Federal Baseball Club v. National League etc. (May 29). Compare Pigg v. International Text B'k Co., 217 U. S. 91.

### 3. *The Volstead Act; Miscellaneous*

Of two cases interpretative of section 3 of the Volstead Act, one held that it forbade the removal of distilled liquors acquired before the act went into effect from government warehouses to the dwellings of the owners of the liquors,<sup>71</sup> and the other that it inhibited the transportation through the United States of intoxicants proceeding from a Canadian port to a foreign port or even their transference from one British ship to another in New York harbor.<sup>72</sup> The *Street* case,<sup>73</sup> decided last term, was distinguished on the ground that the Safety Deposit Company did not "possess" the liquors involved in that case since Street had access to them at all times, thus making the storage "an adjunct to his dwelling." In the second case Justice McKenna, dissenting, made the good point that neither the Volstead Act nor the Eighteenth Amendment were intended to prevent the use of intoxicants as beverages throughout the world but only in the United States, and that, therefore, transportation through the United States did not fall within their terms; but all to no avail. A third decision manifests like zeal in sustaining the "concurrent power" of the states in enforcing prohibition.<sup>74</sup>

A dope fiend is not a "patient" within the meaning of the Harrison Anti-Narcotic Act.<sup>75</sup> The labelling of shoddy as "natural wool," and the like, may be forbidden under the Trade Commission Act.<sup>76</sup> Section 3 of the Interstate Commerce Act does not forbid different rates by different carriers between localities but unjust and discriminatory rates by the same carrier.<sup>77</sup> The Federal Employers' Liability Act does not extend to a railway employee who was injured while working in the company's repair shops on a dismantled engine which had been in the shops more than a month and was not returned to service for another month.<sup>78</sup>

### 4. *The Judicial Code*

Section 237 of the Judicial Code, as amended in 1916, distinguishes in the case of appeals from state courts, between suits "where is drawn in question the validity of" a state statute and suits where, more broadly,

<sup>71</sup> *Corneli v. Moore* (Jan. 30).

<sup>72</sup> *Anchor Line v. Aldridge* (May 15).

<sup>73</sup> *Street v. Lincoln Safety Deposit Co.* 254 U. S. 88.

<sup>74</sup> *Vigliotti v. Pa.* (Apr. 10).

<sup>75</sup> *United States v. Behrman* (Mar. 27).

<sup>76</sup> *Federal Trade Commission v. Winsted Hosiery Co.* (Apr. 24).

<sup>77</sup> *Central Railroad Co. of N. J. v. U. S.* (Dec. 5).

<sup>78</sup> *Industrial Accident Commission v. Payne* (May 29).

"any title, right, privilege, or immunity is claimed under the Constitution." The former may be appealed to the Supreme Court on writ of error, and when they are so appealed the court must pass upon the constitutional question raised; but for the latter only the writ of *certiorari* is available; which leaves it with the court to say whether or not it will exercise its reviewing function. In two or three cases the question was raised whether a suit involving a state statute which was constitutional in form but had been unconstitutionally applied was appealable by writ of error; a question which the court, following the principle that it must read state enactments through the eyes of the state court of final authority, answered affirmatively.<sup>79</sup> Subsequently, Chief Justice Taft has urged that all appeals should be by writ of *certiorari*, thus leaving the court free to reject those which are without merit. The reform is one greatly needed to prevent the court's time from being wasted by the misguided vanity of attorneys.

Another case decided that a collector of internal revenue is not suable for duties mistakenly collected by his predecessor; that the latter's liability is purely personal.<sup>80</sup>

## B. QUESTIONS OF STATE POWER

### I. THE "COMMERCE" CLAUSE

"Where goods are purchased in one state for transportation to another, the purchase is interstate commerce quite as much as the transportation." This doctrine, announced in *Dahnke-Walker Milling Co. v. Bondurant*,<sup>81</sup> gives a new extension to the "commerce" clause as a restriction on state power quite parallel to that which was effected years ago in the famous case of *Robbins v. Shelby Taxing District*.<sup>82</sup> Like that decision, the recent one proceeds from the definition of commerce

<sup>79</sup> See especially *Dahnke-Walker Milling Co. v. Bondurant* (Dec. 12). The case is discussed under B., I. *infra*, in another connection. *Commissioners of Road Improvement Dist. No. 2 v. St. Louis, S. W. R. Co.* determined that proceedings in an Arkansas county court to assess damages and benefits growing out of a road improvement constituted "a suit at common law" within the meaning of § 28 of the Judicial Code, which provides for removals of such suits by a non-resident party to the proper federal district court, notwithstanding that they involved a mixture of legislative, administrative, and judicial elements.

<sup>80</sup> *Smietanka v. Indiana Steel Co.* (Oct. 24).

<sup>81</sup> Decided Dec. 12.

<sup>82</sup> 120 U. S. 489. The case lays down the doctrine that the negotiation of sales in a state of goods to be introduced into it from another state is interstate commerce.

as "traffic," which is indeed its primary signification, and the way had been paved for it by the precedents.<sup>83</sup> Nevertheless, it is an important development of the law, as the later application of it, in *Lemke v. Farmers' Grain Co.*,<sup>84</sup> to set aside a vital part of North Dakota's plan for controlling the marketing of grain in the interest of the growers, strikingly demonstrates. Reciting the argument that this legislation was needed to protect growers "from fraudulent purchases and to secure to them fair prices," the Chief Justice replied that "Congress is amply authorized to pass measures to protect interstate commerce if legislation of that character is needed."<sup>85</sup>

And hardly less noteworthy is the holding in two other cases that, in view of the final destination of the vast proportion of the product, the preliminary steps in the assembling of oil or gas through a company's intrastate branch lines into its main pipe lines for shipment out of the state must be regarded as interstate commerce.<sup>86</sup> "The typical and actual course of events," said Justice Holmes, speaking for the court, "marks the carriage of the greater part as commerce among the states, and theoretical possibilities may be left out of account." This signalizes a wide, but not altogether unheralded, departure from the doctrine of *Coe v. Errol*,<sup>87</sup> that the mere fact of an article's being intended for exportation to another state does not render it an article of interstate commerce—a principle, however, which still holds, another decision warns us, in the case of articles in process of manufacture.<sup>88</sup>

But while in these cases the court made new law, in one or two others it seems to have beaten a retreat from positions recently taken up.

<sup>83</sup> *Brown v. Md.*, 12 Wheat. 419, is the leading case.

<sup>84</sup> Decided Feb. 27.

<sup>85</sup> This language, while far from unambiguous, is evidently intended to convey that such power as is withdrawn by this decision from the state may in case of necessity—a legislative question—be exercised by Congress; a deduction which is confirmed by the grounds of the decision itself, unless a new "twilight zone" has been created. And whatever the decision signifies, the doctrine illustrated by it is obviously applicable to traffic in any of the principal commodities.—It is worth noting, in passing, that this new extension of the "commerce" clause probably takes away from the states much more valuable "sovereignty" than the *Child Labor* decision saves to them; and this is done by judicial interpretation alone.

<sup>86</sup> *Eureka Pipe Line Co. v. Hallanan*, and *United Fuel Gas Co. v. Same* (Dec. 12).

<sup>87</sup> 116 U. S. 517. Cf. *So. Pacific Terminal Co. v. I. C. C.*, 219 U. S. 498.

<sup>88</sup> *Crescent Cotton Oil Co. v. Miss.* (Nov. 14).

Thus in *Texas Co. v. Brown*<sup>89</sup> the question of state taxation of oil products brought into it from other states was again before the court, and the doctrine arrived at that, "although the state may tax the first domestic sale" of such products "or tax them upon their storage in stationary tanks awaiting sale, it may not, without consent of the owner, impose its power [either for the exaction of inspection fees or taxes] upon the product while yet in the tank car, but must resort to other means of collection, if need be;" this, because ordinarily the oil has not "come to rest" in the state until transferred from tank car to storage tank. So far as sales within the state of oil in the original package are concerned this seems to be a direct repudiation of *Bowman v. Continental Oil Co.*,<sup>90</sup> decided last term, and a return in principle to *Brown v. Houston*.<sup>91</sup> Also, the court refused to extend the benefits of *International Paper Co. v. Massachusetts*<sup>92</sup> to a foreign corporation all of whose property lay within the taxing state;<sup>93</sup> but in view of all the facts, the case is perhaps illustrative only of the maxim *de minimis lex non curat*.

## II. THE FOURTEENTH AMENDMENT

### 1. *The Arizona Restaurant Case*

No decision of the term has attracted more animadversion than that in *Truax v. Corrigan*,<sup>94</sup> the facts in which were as follows: Plaintiffs in error, restaurant keepers in Bisbee, Arizona, becoming involved in a dispute over wages with defendants in error, their employees, the latter went on strike, while in order to assist them, the local union to which they belonged pronounced a boycott on plaintiffs' place of business, before which agents of the union patrolled continuously during business hours with banners denouncing plaintiffs, "made insistent and loud appeals all day long" to would-be patrons, and circulated libels, epithets, and threats against plaintiffs, their patrons and employees—all with the final result of a serious falling-off in plaintiffs' business. By section 1464 of the Arizona Civil Code, which is couched in almost the phraseology of section 20 of the Clayton Act, the state courts were

<sup>89</sup> Decided Apr. 17.

<sup>90</sup> 256 U. S. 642; commented on in this *Review*, XVI, p. 239. See also *Askren v. Continental Oil Co.*, 252 U. S. 444, to the same effect.

<sup>91</sup> 114 U. S. 622.

<sup>92</sup> 246 U. S. 135.

<sup>93</sup> *Hump Hairpin M'f'g. Co. v. Emerson* (Mar. 27).

<sup>94</sup> Decided Dec. 19.

forbidden to issue injunctions in labor disputes except to "prevent irreparable injury to property," or to enjoin any person "from terminating any relation of employment . . . or persuading others by peaceful means so to do . . . or from ceasing to patronize . . . any party to such dispute, or persuading others by peaceful means so to do." An Arizona court, having been applied to by plaintiffs in error for an injunction, held that it was inhibited by the provisions just quoted from granting such relief and the state supreme court sustained this ruling. In the case before the Supreme Court plaintiffs in error contended that thus interpreted, section 1464 deprived them of property without due process of law and denied them the equal protection of the laws contrary to the Fourteenth Amendment—a view which was sustained by the court, though by the narrow margin of five judges against four.

The opening section of Chief Justice Taft's opinion for the majority is grounded on the proposition that due process of law implies "a required minimum of protection for everyone's right of life, liberty and property" which neither Congress nor a state legislature may withhold—a proposition, by the way, which has an obvious bearing on the question of the validity of the projected Anti-Lynching law. He then points to the characterization by the Arizona supreme court of defendants' conduct as "lawful," and concludes thus: "To give operation to a statute whereby serious losses inflicted by such unlawful means are in effect made remediless is, we think, to disregard fundamental rights of liberty and property, and to deprive the person suffering the loss of due process of law." The conclusion seems incontrovertible. Nor does Justice Holmes's caveat against "delusive exactness" as "a source of fallacy throughout the law," which is accompanied by the statement that business is not property in the same sense as real estate, but rather "a course of conduct," seem particularly pauseworthy in this connection, the more especially since the same view of property was involved in the *American Steel Foundries* case,<sup>95</sup> to the decision in which Justice Holmes concurred. Likewise, Justice Brandeis's suggestion that the value of a business is always open to inroads by competitors seems not exactly relevant, since even competitors—whose rights are much more venerable than those of labor unions—are held today to increasingly strict requirements in the matter of fair dealing.

In short, up to this point the advantage of position is decidedly with the majority. But now suppose that the Arizona supreme court did

<sup>95</sup> See *supra*, under A, ix, 1.



not really intend to leave plaintiffs in error entirely remediless but only to withhold from them the equitable relief of injunction—which seems, in fact, the more probable assumption. Yet even when given this mitigated construction, section 1464 still offends, the Chief Justice argues, against the “equal protection” clause, which he contends, prohibits unjustifiable privileges and exemptions no less than unjustifiable disabilities and burdens. Thus, he says, if competitors of plaintiffs in error had done the things which its striking employees did, there is no doubt that they could have been enjoined—why, then, should a special case be made of the latter? Justice Pitney answers by pointing to the fact that employees have been made a special case of before, as for instance, in employers’ liability and workmen’s compensation legislation. But, rejoins the Chief Justice, classification “based on the relation of employer and employee in respect of injuries received in course of employment” is one thing, and “classification based on the relation of an employer, not to an employee, but to one who has ceased to be so, in respect of torts thereafter committed” by the latter on the business and property of the former, is quite another; and he asks whether a legislature would be justified in excepting workmen from criminal prosecutions for assaults on former employers and in leaving the latter only their remedy at common law? The question strikes one as pertinent; nor does Justice Brandeis’s elaborate review of the objections that have from time to time been raised against the use of injunctions in labor disputes—most of which apply to their use on any occasion—necessarily prove more than the desirability of regulations looking to their considerate employment.<sup>98</sup>

<sup>98</sup> J. Pitney also argues that the discrepancy, pointed out by C. J. Taft between the position before the law of plaintiffs’ competitors, on the one hand, and that of their former employees, on the other, “is not a matter of which plaintiffs are entitled to complain under the ‘equal protection’ clause,” there being “no discrimination against them.” This both overlooks the purely illustrative purpose of the Chief Justice’s argument at this point, and implies that no one is entitled to complain under the clause unless he has been subjected to some disability in comparison with others similarly situated. But while it is true that most of the cases have arisen in consequence of complaints of this sort, there can be no question that the clause always had the broader application given it in this case. Why, indeed, should not one who finds it impossible to obtain judicial protection for his acknowledged rights because of the immunity of his adversary, be entitled to complain that he is being denied the “equal protection of the laws,” especially since it is evident that he is? Nor should it make any difference that he is the member of a class similarly disadvantaged and his adversary the member of a class correspondingly advantaged; the discrimination is one which must be

It ought, perhaps, to be pointed out that this decision preceded that in the *Coronado* case by some months. So the idea is suggested that the latter may represent an attempt at compromise between the majority and minority of the court in the former case. For, as was hinted before, if labor unions become generally suable for their torts, the contention, today incontrovertible in fact, that the injuries they do property are irreparable, will lose force, and thus the very basis will be removed for the issuance of injunctions in labor controversies.

## 2. *Protection of Labor*

In *Levy Leasing Co. v. Siegel*,<sup>97</sup> the court reiterated its decision of last term sustaining the New York rent laws against objections based on the "due process of law" and "obligation of contracts" clauses.<sup>98</sup> Justice Clarke's opinion is rather more explicit, however, in dealing with the latter point<sup>99</sup> than was Justice Holmes's and also in stating the grounds upon which the court based its finding that the emergency declared by the legislature "existed when the acts were passed."<sup>100</sup>

justified by the ordinary tests—must, in short, be reasonable. As a matter of fact, one of the earliest cases in which the principle of legal equality was successfully invoked against legislative action in this country invoked it in this broader sense: *Holden v. James*, 11 Mass. 396. See also the two earliest cases under the Amendment: *Barbier v. Connolly*, 113 U. S. 27, and *Yick Wo v. Hopkins*, 118 U. S. 356; also Cooley's *Constitutional Limitations*, p. \*390 ff. Furthermore the Chief Justice might well have been content to rest his argument exclusively on the "due process" clause, pointing to the notorious fact that, whatever the Arizona supreme court intended in designating defendants' conduct as "lawful," practically there was no remedy against it except injunction—that in such cases, injunction is, if not *due* process of law, at any rate the *only* process even measurably efficient.

<sup>97</sup> Decided Mar. 20.

<sup>98</sup> *Block v. Hirsh* 256 U. S. 135, and *Marcus Brown Holding Co. v. Feldman*, *ibid*, 170; commented on in this *Review*, XVI, pp. 33-35, 240, 242.

<sup>99</sup> On the subordination of the obligation of contracts to the police power, J. Clarke cites *Manigault v. Spring*, 199 U. S. 473, *Louisville & Nashville R. Co. v. Mottley*, 219 U. S. 467, and other cases.

<sup>100</sup> In this connection the opinion cites, first, "the notorious fact that a grave social problem has arisen from the insufficient supply of dwellings in all large cities of this and other countries" in consequence of the cessation of building activities traceable in turn to the war; secondly, certain official reports on the situation in New York; and thirdly, "the very great respect which courts must give to the legislative declaration" of an emergency. And the emergency being granted, the relation of landlord and tenant becomes one affected with a public interest and so subject to regulation in the way attempted by the acts.

Other cases clear new ground for the ever advancing police power. In *Ward v. Krinsky*<sup>101</sup> the court sustained the recent extension of the New York Workmen's Compensation Act to all employments involving four or more employees, farm laborers and domestic servants alone excepted. Taken in conjunction with the construction given the act by the state court of appeals, the decision practically leaves it with the state legislature to determine what employments are hazardous.

In *Prudential Insurance Co. v. Cheek*<sup>102</sup> was sustained the requirement of a Missouri statute, enacted in 1909, that any corporations doing business in the state shall furnish through its superintendent or manager to any employee leaving its employment, whether voluntarily or otherwise, after ninety days service, a letter setting forth the nature and duration of such service and the reason why the employee left it. Justice Pitney, speaking for the court, based the "reasonableness," and so validity, of this regulation under the "due process" clause, on two propositions: first, that the right to do business as a corporation "is not a natural or fundamental right;" and secondly, that "the reputation of the dismissed employee is an essential part of his personal rights—of his right of personal security." To support the latter statement he pointed to a growing custom among employers not to employ any applicant for a job until the name of the previous employer has been furnished and information has been forthcoming from the latter as to the cause of the applicant's leaving his former job. At the same time, the opinion is careful to declare that the principle laid down in the *Coppage* case,<sup>103</sup> that an employer may discharge an employee for any reason, or no reason, remains unaffected. In another case a similar Oklahoma statute, but with more detailed provisions, was also sustained.<sup>104</sup>

### *3. Regulation of Public Utilities; Judicial Notice*

In a case involving gas rates, the court took cognizance of the fact that there has been an "enormous increase in the cost of labor and materials since 1908."<sup>105</sup> In another, of which street railway fares were the subject matter, it noticed that "the period following the World War has in general been one of continuous price recession."<sup>106</sup> The

<sup>101</sup> Decided June 5.

<sup>102</sup> Same date.

<sup>103</sup> 236 U. S. 1.

<sup>104</sup> *Chicago, Rock Island, & Pacific R. Co. v. Perry* (June 5).

<sup>105</sup> *Newton v. Consol. Gas Co.* (Mar. 6).

<sup>106</sup> *Galveston Electric Co. v. Galveston* (Apr. 10).

latter case also furnishes the following important rule: "Good will and franchise value of a street railway system should be excluded from the base value of property used in the public service when determining whether a rate fixed by municipal ordinance is confiscatory." Also important is the holding in a third case that a state may authorize its corporation commission to make rebates to patrons of a gas company for deficiencies of service, the determinations of the commission being subject to judicial review.<sup>107</sup>

#### 4. Control of Foreign Corporations

Of two fairly obvious rulings under this heading, one announces that the inherent difference between corporations and natural persons is sufficient to justify a state in imposing restrictions upon the right of the former to do business within its borders which are not applied to the latter;<sup>108</sup> and the other states that the right of a foreign corporation doing a domestic business to be secure from conditions which amount to a taking of property without due process of law must be considered to have been waived as to statutes which were in effect when the corporation entered the state.<sup>109</sup> A third case raised a more difficult issue and is dealt with below.

#### 5. Taxation

It is a principle of constitutional law that a state may not tax property which is not within its jurisdiction; that for it to do so would be to deprive one of property without due process of law. In *Anderson v. Durr*<sup>110</sup> the question was, whether Ohio could tax a resident on his membership in the New York stock exchange. Justice Holmes, speaking for himself and two others, thought the membership an interest "so local in its foundation and principal meaning that it should stand like an interest in land." But the majority of the court sustained Ohio's exaction on the principle of *mobilia sequuntur personam*.<sup>111</sup>

<sup>107</sup> *Oklahoma Natural Gas Co. v. Okla.* (Mar. 20).

<sup>108</sup> *Crescent Cotton Oil Co. v. Miss.* (Nov. 14).

<sup>109</sup> *Pierce Oil Corporation v. Phoenix Refining Co.* (May 15).

<sup>110</sup> Decided Nov. 7. A leading case in connection with the general subject is *Union Refrigerator Transit Co. v. Ky.* 199 U. S. 194.

<sup>111</sup> A few minor cases under the Amendment, turning often on peculiar situations, are not listed here. Under both the "due process" clause and the "obligation of contracts" clause, it was held in *Atchafalaya Land Co. v. Williams Cypress Co.* (Mar. 13), that a state may enact statutes of limitation, provided

## III. NATIONAL SUPREMACY; RESORT TO THE NATIONAL COURTS

A state may not revoke a license to a foreign corporation to do domestic business within the state merely because it resorts to the federal courts. State action, whether legislative or executive, which is calculated to curtail the right of citizens to resort to the federal courts is void, "because the sovereign power of a state in excluding foreign corporations, as in the exercise of all others of its sovereign powers, is subject to the limitations of the supreme fundamental law." This doctrine, laid down in *Terral v. Burke Construction Co.*,<sup>112</sup> presumably settles a point long mooted, by explicitly overruling conflicting holdings.<sup>113</sup> Even so, a state may confine to its own courts suits brought against its treasurer to recover taxes wrongfully paid.<sup>114</sup>

Two cases apply and extend the rule that a state may not tax lands belonging to the United States within its limits,<sup>115</sup> while a third illustrates the fact that a state's taxing power over national banks is governed by the will of Congress as that has been indicated in section 5219 of the Revised Statutes.<sup>116</sup>

In a single term of court, Chief Justice Taft has made a notable bid for fame in his new field of work. His leadership of the court is already apparent; his comprehension of its characteristic problems assured; his opinions show grasp, with all of clarity and vigor that the phrase implies. He is manifestly determined that the court shall remain a real factor of the national life; and that is well. The court is not infallible by a long way, but views expressed with the force and lucidity needed to evoke intelligent criticism are already on the way to correction; while the only—and inevitable—remedy of inertia is extinction.

"They allow a reasonable time after their enactment for the assertion of an existing right on the enforcement of an existing obligation." The two or three other cases under the "obligation of contracts" clause are uninformative. *Ferry v. Spokane, P. & S. R. Co.* (Apr. 10) teaches that "dower is not a privilege or immunity of citizenship" either within the meaning of Article IV, § 2, or the Fourteenth Amendment.

<sup>112</sup> Decided Feb. 27. Compare the cases cited in Notes 107 and 108, *supra*.

<sup>113</sup> *Doyle v. Continental Ins. Co.*, 94 U. S. 535, and *Security Mutual Life Ins. Co. v. Prewitt*, 202 U. S. 246. Compare *Home Insurance Co. v. Morse*, 20 Wall. 455, where the present doctrine is foreshadowed.

<sup>114</sup> *Burrill v. Locomobile Co.* (Feb. 27).

<sup>115</sup> *Irwin v. Webb* (Mar. 20), and *Gillespie v. Okla.* (Jan. 30). The leading case is *Van Brocklin v. Tenn.*, 117 U. S. 151.

<sup>116</sup> *First National Bank v. Adams* (Apr. 10).

The number of cases decided last term was about the same as the year previous, but it is to be observed that the pages in which they are reported are five per cent fewer. The process of curtailment could be carried farther with advantage. Judges need sometimes to be reminded of the missionary sermon which forced Mark Twain, when finally the collection plate was passed, to abstract ten cents from it. They seem not always to be aware when demonstration is complete—or mayhap, impossible.

## LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

**Administrative Reorganization in Maryland.** In 1916, with the adoption of the budget amendment to the constitution, Maryland made a long stride forward in the direction of better state government. That amendment provides that the governor shall formulate the budget and present it to the legislature. He, or any officer designated by him, may appear on the floor of the legislature to discuss and defend his estimates.

The power of the legislature over the proposed financial program is materially reduced. Generally speaking, it can only reduce or strike out items. It may not insert new items. Nor may it increase items except those relating to the legislature itself and those relating to the judiciary. The "Budget Bill" becomes law immediately upon its passage without any further action by the governor. The legislature may, however, pass "Supplementary Appropriation Bills." But they may not be considered before the budget has been finally acted upon by both houses. They are, further, subject to the following limitations: every such bill must be confined to a single work, object or purpose; each bill must make provision for the revenue necessary to pay the appropriation and shall direct how the tax to raise it shall be levied and collected; in each instance it will require a majority vote of the whole number of members of each house—the vote on final passage to be recorded by yeas and nays; and, finally, all such bills are subject to the governor's veto power. It should be added that, if the budget has not been finally acted upon by the legislature three days before the expiration of regular session, the governor shall by proclamation extend the session for such further period as will in his judgment be necessary for the final disposition of it. During this period the legislature may not consider anything but the budget, except the expenses necessary in connection with the lengthening of the session.

While it can be said, therefore, that Maryland has gone further than any other state in strengthening the position of the governor's budget powers in relation to the legislature, something else was obviously necessary. In order to enable the governor to present to the legislature

a well matured program for which he could accept a reasonable degree of responsibility, it was necessary to introduce his influence earlier in the process of budget-making. The administrative officials, not appointed by the governor nor responsible to him except in a nominal way, can not be expected to give the scrutiny to, nor exercise the restraint in, the formulation of the estimates so highly necessary to the budget-making authority.

An attempt has been made to meet this necessity, as well as to improve the general efficiency of the state government, by the administrative reorganization provided for by Chapter 29 of the Acts of the General Assembly of this year. The session of 1920 appropriated a sum of money to enable the governor to make a survey of the entire administration. He engaged the services of the firm of Griffenhagen and Associates of Chicago, who submitted their report to him in April of 1921. While disregarded to an extent, this report and the accompanying recommendations have served very largely as the foundation for the reorganization completed this year.

The organization of the administrative system of Maryland was no better and no worse than those found in most of the states of the Union. Article II of the constitution apparently contemplates that the governor should be a real chief executive. The first section provides that "the executive power of the State shall be vested in a Governor," and section 9 that "he shall take care that the laws are faithfully executed." But, like the constitutions of other states, it proceeds to distribute the executive power among several important state officers—though it is true our constitution does not go so far as do the constitutions of many states in this respect. It creates three important state officers, the attorney general, the comptroller, and the treasurer. Both of the latter compose the treasury department. The comptroller is elected by the people and the treasurer, by the two houses of the legislature—both for two-year terms. The attorney general is elected by the people for a four-year term. In addition, the constitution creates four less important officials, whose duties are practically entirely statutory. They are, the secretary of state, the adjutant general, the state librarian, and the commissioner of the land office. All are appointed by the governor subject to confirmation by the senate.

The legislature has supplemented these administrative officers by a host of officers, boards, and commissions, so that at the time of reorganization there were in all seventy-seven separate and distinct administrative agencies in the state government exclusive of the governor.



This has been done, generally speaking, without any consistent policy of coördination or interrelation. The system shows the evidence of every passing fashion in administrative organization. The constitution was adopted in 1867, that is, before the board form of organization had gained all but universal sway. The offices created by it are, therefore, with one exception, headed by single officials. The creations of the legislature have, on the other hand, been very largely of the board or commission type. Of late, however, the pendulum has swung somewhat in the other direction, and many of the recent creations have been of the single-head type.

It may be of interest to summarize briefly the system as it existed prior to the reorganization. There were in all, as has been said, seventy-seven separate, independent, and uncoördinated state administrative agencies—and with few exceptions these same agencies still exist, grouped into appropriate departments. Of these seven were headed by a single executive. Six were appointed by the governor alone. Most of them are very unimportant, such as, the weigher of tomatoes, the measurer of woodcarts, the inspector of hay and straw. Five generally more important officers were appointed by the governor and senate. Two, the comptroller and the attorney general, elected by the people. One, the treasurer, elected by the legislature. The board of public works (the governor, the comptroller, and the treasurer) appointed the auditor, the bank commissioner, and the insurance commissioner. The terms of these officials range generally from two to four years, the terms of the commissioner of motor vehicles and the state employment commissioner, however, being for three and six years respectively. All, except two, are salaried officers; the exceptions being the measurer of woodcarts and the inspector of hay and straw, who subsist on fees.

Of the sixty boards and commissions it is harder to speak without confusion. In membership they run all the way from two to thirty. One, the war records commission, has as high as 370 members. The most frequent number is three and five. The terms of service vary from two to nine years, while thirteen boards have an indefinite term. In the case of twenty-two boards and commissions, the terms of the members overlap. This is particularly true in case of the longer terms, six years and above. Thirty-three boards are non-salaried. The members of sixteen receive a *per diem* for their services. None are paid in fees.

As to manner of appointment, equally great variety is found. Seven were composed entirely of members serving *ex officio*. Of thirteen

others the membership was *ex officio* in part. The governor was a member of eleven boards and commissions. He alone appointed the members of twenty-four. Ten others were appointed by the governor and the senate. In four cases the governor was confined to the appointment of nominees presented by certain professional societies. Finally, in three cases the appointments were made entirely by private parties or organizations.

Very little attempt had been made before the present reorganization to group together similar or related services. Thus, the state board of labor statistics and the state industrial accidents commission were wholly separate and unrelated. So were the eighteen distinct boards for examining and licensing various trades, vocations, and professions. Ten separate and distinct agencies existed for the service or regulation of private business enterprise.

The survey disclosed many interesting things. Several state agencies were practically non-existent. This was true of the weigher of tomatoes, the measurer of woodcarts, the inspector of hay and straw, and the state agricultural lime board. In several instances no means of control existed. The state tobacco inspector, the board of electrical examiners, and various medical examining boards, were not required to make any reports. The various vocational and professional examining and licensing boards had no regular offices and no employees, and their records were in very deplorable shape.

The removal power of the governor of Maryland is extensive, and through this means he may exercise very strong influence upon the conduct of administration. In a comparatively small number of cases he can remove at pleasure. Under section 15 of article II of the constitution he can remove for cause and after a hearing any civil officer appointed by him alone or in conjunction with the senate. The constitution designates incompetence or misconduct as causes for removal. The greatest single need of the situation, as it existed, was the lack of central control by the governor. It was a physical impossibility for him alone to supervise the functions of seventy-seven different agencies without the aid of intermediate supervising functionaries responsible to him. In many cases information that anything was wrong has not come to him until it has become a matter of common knowledge.

The Griffenhagen report recommended the establishment of eleven departments as follows: executive, finance, law, militia, welfare, health, education, public works, commerce, labor, employment and registration,

and an independent office of the comptroller. Each department was to be headed by a director, appointed by the governor and removable by him at pleasure. The eleven department directors were to constitute a governor's cabinet. Internally the departments would be organized with an administrative office for all the routine and clerical work of the department. The governmental services or functions would be grouped into bureaus, each headed by a permanent official serving under the merit system and called a bureau chief or assistant director. There would, in addition, be organized in connection with most of the departments a system of one or more non-paid advisory councils. The comptroller's office would be independent of the general administrative system. He would be elected by the legislature and be responsible to it.

To put this plan into effect would have required three constitutional amendments, affecting the offices of the attorney general, the comptroller, and the treasurer, respectively.

Soon after Governor Ritchie had received the report of Griffenhagen and Associates he appointed a large committee of representative men and women of the Democratic party to consider it and make recommendations to him. This "State Reorganization Committee" authorized its chairman, Judge N. Charles Burke, to appoint an executive committee of twenty-one members to do the actual work on the plan. Eventually the work fell to a small sub-committee of the executive committee under the leadership of Judge Burke and in close coöperation with Governor Ritchie. In fact the governor, himself, did a great deal of the work. The sub-committee made an independent study of the state government and in their final report evolved a plan in many respects quite different from the Griffenhagen plan.

It seems quite certain that, while as compared with the experts' plan the Maryland plan falls short in many ways, the submission of the question to a large body of men and women of the governor's own party was a wise move. It consolidated party opinion behind the governor and eventually led to the endorsement of his reorganization plan by the state convention of the party. And when after a successful election on the issue the politicians tried to balk, they found the governor immovable with a solid public opinion behind him.

Prior to the meeting of the legislature Governor Ritchie, with the coöperation of a few able lawyers, drafted the plan in the form of a bill, being ready to have it introduced at about the beginning of the session of the legislature. After the usual routine study, and after encountering some opposition from the "machine," already referred to, the plan was

finally adopted, having been passed by the senate on the twentieth of February and passed by the house under suspension of the rules on the following day.

The final plan as adopted provides for the following departments:

I. *The Executive Department.* This department will be under the direct supervision and control of the governor. It will be composed of the following offices: secretary of state, parole commissioner, commissioner of the land office, superintendent of public buildings and grounds, department of legislative reference, commissioners of uniform state laws, state librarian.

II. *The Finance Department.* This department comprises the treasury department as created by the constitution, headed by the comptroller and the treasurer. As a matter of fact the comptroller is the real head, the duties of the treasurer being confined practically to the division of deposits and disbursements. The comptroller is the head of the division of financial review and control. The finance department is organized as follows: Division of Financial Review and Control, comptroller, auditor, bank commissioner, state insurance department, state tax commission, central purchasing bureau, Division of Deposits and Disbursements, Board of Public Works, composed of the governor, comptroller, and the treasurer.

III. *Department of Law,* under the direction and control of the attorney general.

IV. *Department of Education,* under the direction and control of the state board of education, a body of seven members appointed by the governor. It comprises the following agencies: state superintendent of schools, the Maryland public library advisory commission, the Maryland school for the deaf, the Maryland industrial training school.

V. *The State Board of Agriculture and the Regents of the University of Maryland.* This department is composed of the following: The University of Maryland, the state forester, state geological and economic survey.

VI. *The Department of Militia.* This department is under the direction and control of the adjutant general.

VII. *The Department of Welfare.* This department is under the direction and control of the board of welfare, which is a non-salaried body appointed by the governor and the senate. It comprises the following: the various correctional institutions under the direct control of the director of welfare and the board of welfare of which he is chairman: the state reformatories, the house of correction, the state penitentiary.

The various institutions for the feeble-minded and the insane under the direction and control of the board of mental hygiene and the commissioner of mental hygiene: the Spring Grove state hospital, the Springfield state hospital, the Crownsville state hospital, the Rosewood state training school, the Eastern Shore state hospital.

VIII. *The Department of Charities.* This department is governed by a non-salaried board of seven members appointed by the governor, who is a member *ex officio*. The chairman of the board is called the director of charities. In addition to these functions, the following institutions are allocated to this department: the Maryland tuberculosis sanatorium, the Pine Bluff sanatorium.

IX. *The Department of Health.* This department is governed by a board of eight members appointed by the governor. All are non-salaried except the chairman, who is known as the director of health.

X. *The Department of Public Works.* This department is governed by the state roads commission. This commission is appointed by the governor alone and may be removed by him at pleasure. It is composed of three members, non-salaried except the chairman, who is known as the director of the department. Its duties are confined to the construction and upkeep of the road system of the state.

XI. *The Commissioner of Motor Vehicles.* Besides the enforcement of the state laws relating to the titling, registration and licensing of motor vehicles and the licensing of operators, this department also has charge of the newly organized state police force.

XII. *The Conservation Department.* This department is headed by a conservation commissioner, whose duty it is to administer the state laws with reference to fish, game, and fur-bearing animals.

XIII. *The Department of Public Utilities:* public service commission of three members appointed by the governor; the people's counsel.

XIV. *The Department of State Employment and Registration.* This department is under the direction of state employment commissioner. It has charge of the administration of the merit system. In addition, eighteen examining and licensing boards are allocated to this department. But they are subject to control by, and must make their report to, the board of public works in the finance department.

There are, in addition, three unimportant state agencies which have not been allocated to any department. They are, the inspector of tobacco, the Maryland state board of censors, and the Maryland racing commission.

Finally, the act provides that the following officials shall constitute the governor's cabinet: the comptroller, treasurer, attorney general,

chairman of the state board of education, president of the state board of agriculture and of the University of Maryland, director of welfare, director of charities, director of health, director of public works, commissioner of motor vehicles, police commissioner of Baltimore city, conservation commissioner, and the commissioner of state employment and registration.

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**Federal and State Power Commissions.** The increasing importance of the states as coöperative administrative agents of the nation has been illustrated during the past two years by the relationship which has developed between the federal power commission and the water power agencies of various states.<sup>1</sup>

The federal power commission, which is an independent national agency composed of the secretaries of war, interior, and agriculture, was created by the Federal Water Power Act of June 10, 1920 (41 Stat. L., 1063), to exercise general administrative control over all water power sites and water power establishments that are located on the navigable waters, the public lands, and on the reservations of the United States.

To accomplish this function, the commission is required to coöperate with the state governments in making investigations of water resources and in publishing the results thereof. This coöperation may also relate to the permits and licenses which the federal power commission is required to issue for the purpose of authorizing the construction of dams, reservoirs, conduits, power houses, transmission lines and kindred projects.

Many states had administered their water power affairs through commissions and other agencies prior to the creation of the national agency, and since that time several of the state commissions have taken direct steps to coöperate with the federal power commission.<sup>2</sup>

The enactment of the Federal Water Power law was immediately followed by coöperative acts on the part of private organizations, state

<sup>1</sup> For other examples of federal and state coöperation see Holcombe, A. N., *The States as Agents of the Nation*, in *Southwestern Political Science Quarterly*, Vol. 1 (March, 1921), pp. 307-327.

<sup>2</sup> The legal and historical phases of state control of water power prior to 1911 is treated by Fairlie, J. A., *Public Regulation of Water Power in the United States and Europe*, in *Michigan Law Review*, Vol. 9, No. 6 (April, 1911), pp. 463-483.

officials, and state legislatures. Particularly active was the short-lived water power league of America which during the preceding January had been chartered under the laws of Delaware "to assist in the revision and codification of existing laws and passage of new laws and coördinating federal and state jurisdiction over waters and water ways."

In July following the Act of June 10, 1920 the league announced that its aim was "to establish working harmony between the states, municipalities, and the federal government,"<sup>3</sup> in the matter of water power development. It accordingly called a convention in Washington "to afford an opportunity to the several states that are interested in water power development to have their representatives come in contact with the federal power commission with a view that there may be evolved a workable program which will coördinate the activities in those states with that of the federal government."<sup>4</sup> At the convention the secretary of the federal power commission urged that the powers that had been conferred upon the commission should "be exercised in coöperation with all other agencies, Federal, State, and private."

*Governors' Letters and Messages.* The Water Power League wrote letters to the governor of each state asking his opinion of the effect of the Federal Water Power Act. Most of the replies expressed a wholesome spirit of state coöperation. For instance, Governor Morrow of Kentucky, replied there were "no adverse laws in Kentucky upon this subject."<sup>5</sup>

Answering for Governor Shoup of Colorado the state engineer stated that they would be pleased to have suggestions as to water power legislation. The chairman of the board of water engineers of Texas replying for Governor Hobby expressed approval "of coöperation between the State Government and Federal Government," all of which was to be attempted at the approaching session of the legislature. He further expressed gratitude that "some of the branches of the Reclamation Department are already coöperating with the State Government" in the development of water resources.

In his annual message to the legislature, Governor Parkhurst of Maine in 1921 urged that a study be made "of the effect of the Federal Water Power Act upon the development of and control of Maine's water powers."<sup>6</sup>

<sup>3</sup> *Bulletin of the Water Power League of America*, Vol. I, No. 1 (1920), p. 1.

<sup>4</sup> *Ibid.* Vol. I, No. 2, p. 8. The proceedings of this convention are given verbatim in *Ibid.* Vol. I, No. 4.

<sup>5</sup> *Ibid.* Vol. I, No. 1.

<sup>6</sup> *Maine Legislative Record* (1921), p. 24.

Governor Cornwell reminded the 1921 session of the West Virginia legislature that the Federal Water Power Act "virtually compels a revision of the water power law now in the State statute books, so as to coördinate with the Federal Statute if the rights of the State are to be protected and if water-power development is to be encouraged."<sup>7</sup>

In its annual report for 1920, the Maine water power commission expressed confidence that the federal power commission's policy will "enable recommendations to be made as to a state policy which will not be at variance with the Federal law."<sup>8</sup>

*Statutes.* In 1921, Oregon and New York, created water power commissions for the specific purpose of coöperating with the federal power commission. Oregon made the governor *ex officio* commissioner of hydroelectric power and directed him to collect data concerning the hydroelectric resources "and to present same to the federal power commission."<sup>9</sup> The state commissioner was directed to urge upon the "federal power commission the merit and desirability of any hydroelectric project in any navigable stream" which he might deem worthy of presentation.

The New York legislature of 1921 created a state water power commission which was not only to coöperate with the federal agency but also to resemble it in organization and legal power. It consists of the conservation commissioner, state engineer and surveyor, attorney general, the temporary president of the senate and the speaker of the assembly. As in the federal power commission, the several members of the New York commission "may assign or transfer to the work of the commission such officers or employees of their respective departmental or office forces as the commission shall desire,"<sup>10</sup> and they are required to "appoint a Secretary, prescribe his duties and fix his salary" and employ engineers and other assistants, prescribe their duties and fix their compensation within a certain limitation.

Like the federal power commission the New York commission is authorized to hold hearings, issue licenses, inspect project works of licenses, examine their books, and "make rules and regulations as to the form of reports required to be made to the commission of licenses, and such special rules and regulations as it deems applicable to particular licenses, and projects licensed" and to make such other ordinances as may be necessary for the execution of the law.

<sup>7</sup> Journal of the Senate of West Virginia (1921) Appendix A, p. 36.

<sup>8</sup> P. 25.

<sup>9</sup> Oregon, Session Laws (1921) pp. 642-643.

<sup>10</sup> New York, Session Laws (1921) 579, p. 1736.



In relation to the national government it may "present for the consideration of the Congress or officers of the federal government, as occasion requires, the just rights of the state in relation to its territorial waters, and institute and prosecute, through the attorney-general, appropriate actions and proceedings to secure such rights, and defend, through the attorney-general, any action or proceeding calculated to impair such rights." Furthermore the commission may "coöperate with any officers, boards or bodies of the federal government in an endeavor to harmonize any conflicting claims of the state and the federal government to control over the leasing or licensing of the use of waters for power purposes to the end that the development of the water power resources of the state may be accelerated," and they may "act for the state in the matter of all applications made to the federal government or any of its officers, boards or Commissions for permits or licenses for the development or use of water power in the state, and may do and perform such acts in connection therewith as it deems proper to protect the interests of the state." They may also confer with the federal officials, in relation to the development of power on the St. Lawrence and Niagara rivers.

Persons obtaining licenses for power sites must promptly comply with all directions that the state commission may make in the interests of navigation and they must likewise "comply with such lawful rules and regulations as may from time to time be prescribed by the federal government, its duly authorized officers or agents relating to the navigation of the waters covered by the licenses." Kindred to the federal act are provisions for the regulation of rates charged for generated power, and stipulations as to the time limits for the construction of projects.

While there were no additional state commissions created in 1922 to coöperate with the federal power commission, the proposition has been ardently agitated in several states.

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**Legislative Investigating Committees.** This study covers some eighty investigations that are being carried on by the states, either separately or in coöperation, to be reported to the next legislature. Except in a very few instances, the investigating committees are created by legislative action. While not all of these commissions are of great importance from a legislative point of view, it is significant that the majority of them either are selected for their peculiar ability to deal

with the subject of investigation or are specifically granted expert assistance. In general they are accorded wide powers of obtaining information and are provided with funds. In some instances the legislatures failed to make specific appropriations to the committees, although public financial support is clearly indicated. In only a few instances the legislature expressly provides that the commission authorized is not to be financed by state funds.

The total amount specifically appropriated to all the committees is \$736,100 divided among the groups as follows:

Water power, water supply and water ways.....	\$386,000
Education.....	80,000
Statute revision.....	40,000
Soldiers' compensation, memorials, celebrations.....	36,000
State administration.....	33,000
Banking and industry.....	31,000
Taxation.....	6,500
Building and housing.....	5,000
Social welfare.....	4,500
Miscellaneous.....	600

The groups are here considered in order of financial support which indicates in a measure the importance they assume in the public mind—not forgetting, however, that certain kinds of investigation are necessarily more expensive than others.

*Waterways, Water Power and Water Supply.* The 1921 legislatures of seven states authorized coöperation in the Great Lakes, St. Lawrence tide-water enterprise.<sup>1</sup>

The Colorado river joint commission, to enter into an agreement respecting the utilization and disposition of the waters of the Colorado river and tributary streams and the rights of the states and the United States government thereto, consists of one representative from the United States government and one from each of the states watered or drained by the Colorado river and tributaries.<sup>2</sup>

<sup>1</sup> Illinois, appropriation \$20,000, Laws 1921, p. 15, S.B. 497; Iowa, appropriation \$5000 per annum, 2 years, Acts & Jt.R. 1921, c. 339; Michigan, appropriation \$18,000, Laws 1921, p. 298, no. 136; Nebraska, appropriation Laws 1921, ch. 202; Montana, no expense to state. Session Laws 1921, p. 674, S.J.R. no. 2; Indiana Acts 1921, ch. 294; Wisconsin, appropriation \$6250 annually, 2 years, Laws 1921, ch. 295.

<sup>2</sup> Arizona, appropriation \$25,000, Session Laws 1921, ch. 46; California, Stat. and amend. 1921, ch. 88; Colorado, Session Laws 1921, ch. 246; Nevada (creates a permanent commission and appropriates \$5000), Statutes 1921, ch. 115; New Mexico, appropriation \$15,000, Laws 1921, ch. 121; Utah, Laws 1921, ch. 68; Wyoming, Session Laws 1921, ch. 120.

South Dakota<sup>3</sup> provided for a commission to survey the basins of the James and Big Sioux rivers, to determine the feasibility and cost of providing an adequate drainage system, Indiana for a commission to work out a plan for the improvement of the drainage system of the Kankakee river,<sup>4</sup> and for a commission to codify the drainage laws of the state.<sup>5</sup> Illinois<sup>6</sup> and Indiana<sup>7</sup> have authorized an interstate harbor commission to investigate and report upon the feasibility of a public interstate harbor at or near Wolf Lake and Lake Michigan, partly in Hammond and Whiting and partly in Chicago.

Two water resources surveys were authorized: one in Missouri,<sup>8</sup> by the bureau of geology and mines coöperating with the United States geological survey, and one in California,<sup>9</sup> by the state engineer. California appropriated \$200,000 for this survey and directed the state engineer to investigate the possibilities of storage, control and diversion of the waters of the state, surface and underground, for public use and public protection.

West Virginia<sup>10</sup> authorized a commission on waterpower legislation and provided that the expenses be paid out of the contingent fund. Connecticut<sup>11</sup> authorized a commission to study the elimination from streams of all substances and materials polluting the same.

*Education.* That education ranks second in the list indicates at least a healthy dissatisfaction with present conditions.

The California<sup>12</sup> commission is to investigate the plan of operation and organization of agricultural colleges in the United States and to recommend a plan for the reorganization of agricultural instruction in the state of California.

The Kansas<sup>13</sup> school code commission is directed to present to the next legislature a report containing recommendations as to amendments and changes in the Kansas laws which will eliminate the overlapping in activities and will render the school system more efficient.

<sup>3</sup> South Dakota, appropriation, \$20,000, Session Laws 1921, ch. 198.

<sup>4</sup> Indiana, appropriation \$1000, Acts 1921, ch. 10.

<sup>5</sup> Indiana, appropriation \$2500, Acts 1921, ch. 134.

<sup>6</sup> Illinois, Laws 1921, p. 36, H.B. 507.

<sup>7</sup> Indiana, Acts 1921, ch. 187.

<sup>8</sup> Missouri, appropriation \$20,000, Laws 1921, p. 88, S.B. 372.

<sup>9</sup> California, appropriation \$200,000, Stat. & amend. 1921, ch. 889.

<sup>10</sup> West Virginia (expenses out of contingent fund), Acts 1921, p. 649, S.J.R. 18.

<sup>11</sup> Connecticut, P.A. 1921, ch. 395.

<sup>12</sup> California, appropriation \$10,000, Stats. & amend. 1921, ch. 698.

<sup>13</sup> Kansas, Laws 1921, ch. 303.

The New York<sup>14</sup> legislature of 1922 authorized a joint legislative committee to investigate educational conditions; and Illinois,<sup>15</sup> Indiana<sup>16</sup> and Oklahoma<sup>17</sup> each made provision for an investigation of the entire educational system of the state. The Indiana commission is to be financed out of the governor's emergency fund; Illinois appropriated \$50,000; and Oklahoma appropriated \$20,000 and stipulated that the expert services of Martin Brumbaugh of Philadelphia, Penn. be secured if possible and other experts from the United States bureau of education.

*Statute Revision.* Pennsylvania continued two commissions on revision of statutes and appropriated \$5000 to each, one on the recording of deeds<sup>18</sup> and the other on the revision of the penal code.<sup>19</sup> Kansas<sup>20</sup> appropriated \$25,000 to a commission of qualified lawyers appointed by the supreme court, to employ an expert to revise, compile, edit and index the general statutes. In New Jersey<sup>21</sup> a commission is authorized to revise the election laws, in Ohio<sup>22</sup> the superintendent of insurance is directed to prepare an insurance code, and in Rhode Island<sup>23</sup> a commission has been appointed to revise the probate laws. In Wisconsin a special joint legislative committee was appointed to assist the revisor of statutes<sup>24</sup> and another legislative committee was appointed to investigate systems of land registration and the recording of instruments affecting the title to real estate.<sup>25</sup>

*Soldiers' Compensation, Memorials, Celebrations.* A commission on adjusted compensation to soldiers will submit a bill to the 1923 legislature of Florida.<sup>26</sup> In West Virginia<sup>27</sup> a commission will report on a fitting and proper soldiers' memorial to be erected in the new capitol building.

Pennsylvania has appropriated \$1000 for the expenses of a commission to select a state military cemetery,<sup>28</sup> \$25,000 for a Battlefield com-

<sup>14</sup> New York, Letter N. Y. Leg. Ref. Lib.

<sup>15</sup> Illinois, Laws 1921, p. 31, S.B. no. 90.

<sup>16</sup> Indiana, Acts 1921, ch. 293.

<sup>17</sup> Oklahoma, Laws 1921, ch. 194.

<sup>18</sup> Pennsylvania, Laws, 1921, p. 1189, no. 441.

<sup>19</sup> *Ibid*, p. 1187, no. 439.

<sup>20</sup> Kansas, Laws 1921, ch. 207.

<sup>21</sup> New Jersey, Laws 1921, J.R. no. 6.

<sup>22</sup> Ohio, Laws 1921, p. 200, S.B. 194.

<sup>23</sup> Rhode Island, appropriation \$5000, S. 97, 1922, Res. no. 43.

<sup>24</sup> Wisconsin, Session Laws, 1921, J.R. no. 5).

<sup>25</sup> Wisconsin, Session Laws, 1921, J.R. no. 54.

<sup>26</sup> Florida, Laws 1921, ch. 8463.

<sup>27</sup> West Virginia, Acts 1921, p. 655, S.C.R. no. 10, House substitute.

<sup>28</sup> Pennsylvania, Laws 1921, p. 322, no. 160.

mission to visit the battlefields of France and Belgium and select sites for monuments and markers, to select designs and ascertain the probable cost.<sup>29</sup> This state has also appropriated \$10,000 for an Independence commission to coöperate with Congress, with the city of Philadelphia and with the legislatures of the states to provide for the proper celebration of the one hundred and fiftieth anniversary of American independence in 1926.<sup>30</sup>

The New Hampshire legislature authorized a commission to provide appropriate observance of the 300th anniversary of the first white settlement in New Hampshire in 1623.<sup>31</sup>

*State Administration.* Five states will have reports dealing with matters of state administration. Pennsylvania<sup>32</sup> has appropriated \$5,000 for the expenses of an unpaid commission to investigate the laws organizing the several state departments and prepare a plan reorganizing and consolidating the same. Virginia<sup>33</sup> appropriated \$3,000 for a commission to study the organization of the government, state and local, and make two reports,—one recommending improvements that may be effected without constitutional amendments and the other to include improvements conditioned upon necessary constitutional changes. Illinois<sup>34</sup> appropriated \$25,000 for the expenses of a commission to investigate salaries, wages, fees and other compensation for personal services of all employes of the state, and make a plan for standardizing the same. Oregon<sup>35</sup> authorized a joint legislative committee to investigate: (1) existing conditions of accounting in the state; (2) the benefits to be derived from adopting a uniform accounting system; (3) the advisability of putting the state accounting system in the hands of an elected state auditor. South Dakota<sup>36</sup> authorized the governor to employ experts to make an efficiency survey of the state government.

*Banking and Industry.* Four reports on banking will be made to four state legislatures in 1923. In Oregon<sup>37</sup> a committee of five legislators acting with a like committee of the state bankers' association will

<sup>29</sup> Pennsylvania, Laws 1921, p. 1173, no. 432.

<sup>30</sup> Pennsylvania, Laws 1921, p. 1183, no. 437.

<sup>31</sup> New Hampshire, Laws 1921, ch. 178.

<sup>32</sup> Pennsylvania, Laws 1921, p. 1188, no. 440.

<sup>33</sup> Virginia (Act June 19, 1922).

<sup>34</sup> Illinois, Laws 1921, p. 66, H.B. 358.

<sup>35</sup> Oregon, General Laws 1921, p. 832, concur R. no. 7.

<sup>36</sup> South Dakota, Laws 1921, ch. 384.

<sup>37</sup> Oregon, General laws 1921, J.R. 14.

report on the question of the guarantee of bank deposits. No expense is to be incurred by the state for this committee. The Pennsylvania<sup>38</sup> commission authorized in 1917 and continued in 1921, with an appropriation for expenses of \$8500, and the Rhode Island<sup>39</sup> commission provided by the legislature of 1922, with an appropriation of \$5200 for expenses, will report on the laws of their respective states relative to banking institutions and other institutions that come under the supervision of the banking commissioner and recommend such changes in the law as seem advisable. In West Virginia<sup>40</sup> a commission will revise, re-enact and recodify the building and loan laws of that state. No financial provision is made for this committee.

In the industries, two states will give attention to coal mining. The Illinois<sup>41</sup> commission of nine members representing equally operators, practical coal miners and the public will submit a revision of the existing laws unanimously agreed upon and separate report on matters upon which the commissioners are disagreed. The appropriation for this commission is \$7000.

The Indiana coal commission<sup>42</sup> of six members is in like manner representative, the public being represented by the department of mines and mining. This commission will codify the existing laws on coal mining. Their recommendations for new legislation must be unanimous.

On the problems of marketing, the Mississippi<sup>43</sup> agricultural and industrial commission created by the last session of the legislature, will study the economic conditions of the state and the marketing of Mississippi products. The Rhode Island<sup>44</sup> commission on foreign and domestic commerce with an appropriation of \$15,000 will report to the governor in January of each year of its three years existence. In North Carolina<sup>45</sup> a commission on cotton is authorized to confer with commissions from other cotton states to ascertain (1) the world's demand for cotton, (2) the cost of cotton production, (3) the price to be fixed by the planters, and (4) to work out a scheme to finance the crops in order to maintain the price so fixed.

<sup>38</sup> Pennsylvania, Laws 1921, p. 1201, no. 447.

<sup>39</sup> Rhode Island, H. 786, no. 128, of 1922.

<sup>40</sup> West Virginia, Acts 1921, p. 659, H.J.R. 16.

<sup>41</sup> Illinois, Laws 1921, p. 39, H.B. 418.

<sup>42</sup> Indiana, Acts 1921, ch. 279, sec. 4.

<sup>43</sup> Mississippi, Ag. & indus. com. (8) marketing activities July 19, 1922.

<sup>44</sup> Rhode Island, H. 660, 1922, Res. no. 10.

<sup>45</sup> North Carolina, Public Laws 1921, p. 551, Res. no. 15.

*Taxation.* The question of how to raise more revenue and at the same time reduce or seem to reduce taxes is always of interest.

California,<sup>46</sup> Iowa,<sup>47</sup> Pennsylvania,<sup>48</sup> Utah,<sup>49</sup> Maryland,<sup>50</sup> New York,<sup>51</sup> Oregon<sup>52</sup> and Washington,<sup>53</sup> all provided commissions on taxation at their last sessions. California made the state board of equalization a permanent tax investigating committee, to report to each legislature at the convening thereof. Iowa's joint legislative committee on tax revision is given expert assistance and such sum for expenses as may be necessary to carry out the purposes of the act.

Pennsylvania's tax law revision commission of 1919 and the New York joint legislative committee on taxation were continued.

Utah and Oregon provided for investigations on methods of taxation to provide more equitable distribution and to afford adequate revenues to the state. The Maryland tax commission and the governor of Washington, through expert assistants, are instructed to investigate the entire subject of taxation.

*Building and Housing Investigations.* Three reports are in course of preparation on building and housing and one on home ownership.

The Illinois<sup>54</sup> building investigation commission report will deal with the cost of building and building materials, combinations, agreements, practices, etc. of employers, distributors and laborers, by which prices are affected. \$50,000 was appropriated for the expenses of this commission. \$10,000 was appropriated to the New Jersey<sup>55</sup> building code commission. The New York<sup>56</sup> legislature of 1922 authorized the committee on housing to continue its investigations.

The California<sup>57</sup> legislature directed the commission on immigration and housing to report to the 1923 legislature a bill or bills embodying a plan whereby working men may with the assistance of the state acquire homesteads on the installment plan.

<sup>46</sup> California, appropriation \$2,500, each biennium. Stats. & amends. 1921, ch. 428.

<sup>47</sup> Iowa, Acts. and J.R. 1921, ch. 411.

<sup>48</sup> Pennsylvania, appropriation \$5000. Laws 1921, p. 1077, no. 398.

<sup>49</sup> Utah, Laws 1921, ch. 133.

<sup>50</sup> Maryland, *Bulletin* National tax association, May 1922, p. 241.

<sup>51</sup> New York, Letter from N. Y. Leg. Ref. Lib. June 12, 1922.

<sup>52</sup> Oregon, appropriation \$10,000. General Laws 1921, ch. 327.

<sup>53</sup> Washington, appropriation \$20,000, Session Laws 1921, ch. 171.

<sup>54</sup> Illinois, Laws 1921, p. 29, S.B. 510, p. 858, S.J.R. no. 9.

<sup>55</sup> New Jersey, Laws 1922, J.R. 2.

<sup>56</sup> New York, Letter from N. Y. Leg. Ref. Lib. June 12, 1922.

<sup>57</sup> California, Statutes and amendments, 1921, ch. 142.

*Social Welfare.* The social investigations number eight, but they are not so well financed by legislative appropriation. Only \$4500 is appropriated, \$2000 by New Jersey and \$2500 by Pennsylvania.

The commissions are the New Hampshire<sup>58</sup> commission to revise the laws relating to employers' liability and workmen's compensation; the Montana<sup>59</sup> investigation of the problem of old age among wage earners; the New Jersey<sup>60</sup> and the Pennsylvania<sup>61</sup> commissions to codify and revise the laws relating to the poor; the Utah<sup>62</sup> public welfare commission to study the question of public health and the problem of the dependent, neglected, delinquent and defective classes; the Minnesota<sup>63</sup> commission, recently appointed by the governor, to investigate the work being done by the state for the blind and for the prevention of blindness; the two state mental deficiency surveys of all public institutions including the public schools, one in Arizona<sup>64</sup> being made by the national committee on mental hygiene and the data compiled and prepared by the state legislative reference library, and the other in Virginia<sup>65</sup> being made by a state commission composed of state officials, legislators and citizens.

*Miscellaneous.* Of interest is the Rhode Island<sup>66</sup> joint special committee to determine how far the statutes of Rhode Island deny or abridge the political and civil rights of women. No women are on this committee and the appropriation is \$600.

The Minnesota<sup>67</sup> legislature provided a commission to investigate the feasibility and the cost of establishing a state cement plant. The governor of Minnesota<sup>68</sup> has appointed a crime commission to study the causes and recommend methods of prevention.

Minnesota<sup>69</sup> has also a commission on the redistricting of judicial districts, and Tennessee<sup>70</sup> a commission on the installation of a voting machine.

<sup>58</sup> New Hampshire, Laws 1921, ch. 179.

<sup>59</sup> Montana, Laws 1921, p. 692, H.J.R. no. 7.

<sup>60</sup> New Jersey, 1922, J.R. no. 3.

<sup>61</sup> Pennsylvania, Laws 1921, p. 136, no. 84.

<sup>62</sup> Utah, Laws 1921, ch. 56.

<sup>63</sup> *School and Society*, Aug. 5, 1922, p. 156.

<sup>64</sup> Arizona, Laws 1921, S.C.R. 3.

<sup>65</sup> Virginia, S.B. 59, ch. 368.

<sup>66</sup> Rhode Island, 1922, S. 62, Res. no. 41.

<sup>67</sup> Minnesota, Laws 1921, ch. 477.

<sup>68</sup> Minnesota, apparently not created by legislative action.

<sup>69</sup> Minnesota, Laws 1921, p. 1031, Res. no. 14.

<sup>70</sup> Tennessee, Public Acts 1921, p. 597, H.J.R. no. 71.



Created as a practical way of effecting intelligent legislation, the reports of these commissions will be worth study. They point the trend of important legislation during the coming winter. We may expect them to throw new light upon the subjects of investigation.

LUCILE MCCARTHY.

*Wisconsin Legislative Reference Library.*

## FOREIGN GOVERNMENTS AND POLITICS

EDITED BY FREDERIC A. OGG

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**European Politics during the War.** The "Economic and Social History of the World War," sponsored by the Carnegie Endowment for International Peace and edited by Professor J. T. Shotwell, of Columbia University, is planned to contain several volumes which will be of interest to students of foreign and comparative government. A. B. Keith's *War Government of the British Dominions* has already appeared and was reviewed in this journal last November. Among other volumes having a direct political bearing may be mentioned: W. G. S. Adams, *The War Government of Great Britain*; E. M. H. Lloyd, *The Mechanism of Certain State Controls* [in Great Britain]; G. D. H. Cole, *The British Labor Unions*; A. Shadwell, *Liquor Control in War Time*; R. Picard, *Syndicalism in France during the War*; M. Hauser, *Problems of Regionalism* [in France]; A. Bernard, *Economic and Social History of French Northern Africa*; M. Delahache, *Alsace-Lorraine*; A. Girault, *Economic and Social History of the French Colonies*; J. Redlich, *War Government in Austria-Hungary*; Count A. Apponyi, *The Effects of the War upon Government Administration and Public Opinion in Hungary*; and H. Pirenne, *Belgium and the World War*. Numerous monographs remain to be arranged for, notably on Germany, Russia, and the Balkan states.

**Swiss Initiative Votes of June 11, 1922.** On June 11 of this year three amendments to the Swiss federal constitution, proposed by initiative, were voted upon. The most important was one regarding naturalization. By Article 44, section 2, of the constitution of 1874, this subject was left to federal legislation. The proposed amendment attempted to place the more essential details of the process of naturalization in the constitution. Consent of the *Bundesrat* to the grant of communal and cantonal citizenship was to be given only in case the foreigner during the fifteen years prior to his application had lived at least twelve years in Switzerland, including the two years immediately

preceding his application. This requirement was not to hold in the case of married women or of children under fifteen years of age. Naturalized citizens who between five years of age and their majority had not lived at least twelve years in Switzerland should not be allowed to hold political office in communes or cantons or under the federation. Legislation might provide easier terms of naturalization for foreigners born and spending their childhood in Switzerland.

Switzerland has a relatively large alien population. At all times a problem, this condition caused acute difficulties during the war. In large part, the proposed naturalization amendment was an outgrowth of these war-time difficulties. It is interesting to note in the terms of the amendment itself the easier conditions proposed for foreigners born in or coming to the country as children. These easier conditions were proposed because it was felt that education in the Swiss public schools is the best preparation for full citizenship.

Both the *Bundesrat* and the Federal Assembly opposed the naturalization amendment. They called attention to the fact that the residence requirement had already been raised, from the three-year period fixed in the law of 1903, to four years in 1917, and to six years in 1920. Twelve years they held to be excessive. At present no other country requires more than ten years. For the provision regarding passive suffrage there was a precedent in the constitution of 1848, which excluded naturalized citizens from the National Council for a period of five years. However, this was omitted from the constitution of 1874, although in 1920 the *Bundesrat* proposed to return to the provision of 1848 on this subject. But to exclude naturalized citizens from public office for life was to create two classes of citizens, one of inferior rights, and this was contrary to the democratic form of state organization.

The second initiative was also directed against foreigners. According to Article 70 of the present constitution, the federal government has the right to expel from Swiss territory foreigners who endanger the internal or external safety of the federation. The proposed amendment made it not only the right but the duty of the federation to expel such foreigners, and formulated additional grounds for expulsion, namely participation in intrigues or political undertakings contrary to the constitution and of such character that they might disturb the good relations of Switzerland to foreign states; also participation in economic activities which are in conflict with good faith in commercial relations and which injure the general interests of Swiss business.

The *Bundesrat* also opposed this amendment as superfluous and dangerous. The sweeping character of the new grounds for expulsion is apparent. If adopted and enforced, they would undoubtedly lead to reprisals against Swiss citizens abroad.

In 1920 the third of the proposed amendments came close to adoption by the Federal Assembly, failing only because of disagreement on a matter of detail between the two houses. Thereupon it was made the subject of an initiative movement. Its purpose was to substitute for Article 77 of the constitution a provision making membership in the National Council incompatible not only with membership in the Council of States and the Federal Council, but also with the position of bureau chief in the departments under the Federal Council and with membership in the general and circuit directories of the federal railways. On this amendment the organs of the central government were silent.

According to official returns, the popular vote of June 11 was overwhelmingly against all three amendments; as follows, 347,988 to 65,828 on the first; 258,881 to 159,200 on the second; and 257,469 to 160,181 on the third. Not a single canton was carried for the first two, and only five cantons for the third amendment. It is evident that such feeling against resident foreigners as was developed in Switzerland during the war has in large part disappeared.

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**The New Prussian Constitution.** To the student of comparative constitutional law the new Prussian constitution of November 30, 1920, is of scarcely less interest than that of the reconstituted German Empire itself. In sharp contrast to American state constitutions, the instrument is of moderate length, about four thousand words, and is limited to the bare outlines of a frame-work of government. All doctrinaire elements are lacking. There is even no bill of rights. One is particularly impressed by its business-like character. It contains eighty-eight sections, grouped into eleven articles, as follows: the State; the Public Powers; the Diet; the Council of State; the Ministry; Legislation; Finances; Autonomous (local) Administration; Religious Communities; Public Functionaries; and Regulations regarding the Transition.

The principle of popular sovereignty is fundamental and determining throughout. The constitution is asserted to have emanated from the people, and they are declared to be the depository of the public powers. The popular will is revealed directly through the suffrage by means of

the initiative, the referendum and elections, and indirectly through the organs of government established by the constitution. The right to vote is universal, equal and direct, and accorded to all German citizens twenty years of age who are domiciled in Prussia. The initiative may be employed for three purposes: to amend the constitution; to enact, amend or repeal a statute; and to effect a dissolution of the Diet. In all cases the initiative petition is addressed to the Ministry who transmit it with their remarks to the Diet. When the proposal relates to a constitutional amendment or a dissolution, the petition must be supported by twenty per cent of the qualified voters; a statutory initiative petition requires only five per cent of the electors. Financial matters, including taxation and the appropriation of money, are not subject to the popular initiative. If the Diet itself gives effect to the initiative proposal in any of the three forms, the referendum does not follow. Otherwise, an election occurs at which an absolute majority of all qualified voters must support the proposal in order for it to become effective if it relates to a constitutional amendment or a dissolution. Statutory proposals are enacted into law by a majority of those voting.

The Diet is the supreme legislative authority. Not only ordinary laws, but constitutional amendments may be enacted by it, the latter requiring for passage the support of two-thirds of a quorum consisting of two-thirds of the entire membership. This body is elected for a term of four years according to the principles of proportional representation. The validity of the elections to the Diet is determined by a tribunal composed of three of its own members and two members of the highest administrative court. Members of the Diet are not subject to instructions from their constituents. One of the most interesting and novel features of the constitution is that which provides for a dissolution of the Diet. This may be effected by action of the Diet itself; by a majority vote of a committee consisting of the prime minister, the president of the Diet and the president of the Council of State; or by a referendum invoked by the popular initiative or by the Council of State. An election must ensue within sixty days after a dissolution, and the new Diet convenes not later than thirty days from the election. Provision is made for one regular session annually and for special sessions called by the president of the Diet on demand of the Ministry, or of one-fifth of the deputies. Ministers are obliged to appear before the Diet or before any of its committees when summoned. They and their representatives have, however, the right of *entrée* on their own account, and may interrupt the order of business at any time to address

the Diet. The Diet may, and on the demand of one-fifth of its members must, institute committees of investigation (*enquêtes*) upon any subject. These committees possess compulsory process over all administrative and judicial officials. When the Diet is not in session, the rights of popular representation are safe-guarded against possible encroachment by the Ministry by a permanent committee which possesses the same rights as those of a committee of investigation.

The fourteen provinces into which Prussia is now divided are represented as such in the Council of State. Each is entitled to one member for each 500,000 inhabitants, with a minimum representation of three members, except that Hohenzollern is given only a single representative. Readjustments will be made by the Ministry following each census, or alteration of provincial boundaries. The members of the Council of State are elected according to the principles of proportional representation by the local (usually provincial) diets. Like the members of the Diet, those of the Council of State are not subject to any imperative mandate. After its first organization, the Council of State is summoned at the call of its president, whenever public affairs require. It is his duty to summon it whenever demanded by one-fifth of the members, by all the delegates from a single province, or by the Ministry. The Council of State's relation to the Diet is not that of a coördinate legislative chamber. Its position is comparable to that of the British House of Lords. All laws passed by the Diet must be submitted to it. It has the right within two weeks of expressing its opposition, and may within a further period of two weeks submit its reasons for opposition. These are addressed to the Ministry. In case the Council of State opposes a legislative measure, it is resubmitted to the Diet, and in order to become law must be re-passed by a two-thirds majority. Failing in this, the Diet may, however, invoke the referendum. The Council of State has, moreover, an absolute veto upon any appropriation of money by the Diet in excess of the amount requested in the budget of the Ministry, and in such case the referendum is not permitted.

The Ministry is the supreme executive authority. There is no president of the republic of Prussia. The prime minister, in consequence, is the highest official in the state, and performs many of the functions of a permanent chief executive as well as those of a responsible minister. He is elected by the Diet, and himself appoints the other ministers. He is charged by the constitution with the determination of the general lines of policy, and is responsible therefor to the Diet. The administration of each department is under the direction of the minister at its

head who acts independently in regard to departmental affairs and is individually responsible to the Diet. Collectively the Ministry determines upon the competence of each minister, subject, however, to such regulations as the Diet may enact. It is interesting to observe that, though Prussia is only a member state in the Empire, the constitution makes the Ministry the representative of the state in foreign affairs. It negotiates treaties which, however, require ratification by the Diet when their execution is dependent upon legislation. It submits proposals of law to the Diet which must, however, have first been submitted to the Council of State for its advice. In case the latter does not approve, it has the right of transmitting its opinions to the Diet in writing. The Ministry also submits an annual budget to the Diet. The failure of the Diet to vote the budget does not bring the wheels of government to a stand, as the Ministry is authorized to make expenditures necessary to continue services and undertakings legally established and to issue bonds to the extent of one-third of the budget of the preceding year to supply the necessary funds. The Ministry issues such decrees as are necessary for the execution of the laws which likewise require previous submission to the Council of State for advice. The Ministry is, however, not bound to follow the advice of the Council of State in such matters.

Officials whose functions are of a general and not departmental character, including those delegates to the Federal Council who are not chosen by the provinces, are appointed by the Ministry. The Ministry exercises the power of pardon, but may not pardon a minister convicted for an abuse of his powers, nor grant a general amnesty, nor bar the courts in the trial of crimes. When the Diet is not in session, the Ministry, in agreement with the permanent committee of the Diet, may meet emergencies by issuing decrees having the force of law, provided that they are in conformity to the constitution. Such decrees must, however, be immediately submitted to the Diet for its ratification upon its next assembly.

The Ministry is collectively and individually responsible to the Diet, which can enforce its control through votes of lack of confidence. A proposal for such a vote must be signed by at least thirty deputies. Not until the second day after the discussion on such a proposal has taken place may it come to a vote, but it must be disposed of within fourteen days from its initiation. On such a question the vote is taken by roll-call, thus fixing responsibility upon the individual deputy. An absolute majority of the entire membership is required for passage.

In case the vote of lack of confidence is directed against the prime minister, he may appeal to the people through a dissolution of the Diet, provided he is able to secure the support in this action of either the president of the Diet or the president of the Council of State. The Council of State or the people may come to the rescue of a Ministry which is losing the confidence of the Diet through the initiative demanding a dissolution, and pending the referendum on this question lack of confidence may not be voted by the Diet.

On analysis it will be seen that the Prussian constitution provides for a government of a parliamentary type, but with certain important departures from the British and French models. There is evidence that the framers were influenced to a considerable extent by the government of Switzerland, and have modified the principles of the pure ministerial or parliamentary type of government in the direction of the Swiss system. There is also more than a suggestion of "checks and balances." Fundamentally it is intended to be a thorough-going democracy.

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**Constitution of the Far Eastern Republic.<sup>1</sup>** The constitution of the Far Eastern Republic, promulgated April 17, 1921, contains ten articles, divided into 184 clauses. There is no preamble. Article I, among other general provisions, sets forth that "The Far Eastern Republic is established as a democratic republic." Article II names the component parts and the boundary lines of the state and undertakes to maintain the rights and obligations formerly Russian within that territory. The subject of Article III is "Citizens and their Rights." Included in the latter are equality before the law; freedom of conscience and speech; habeas corpus; inviolability of person, house, and correspondence; and non-liability to arrest without warrant unless taken in the act. Among rights not usually found in western constitutions are the unrestricted right to strike; uncensored mails, telegraph, and telephone; freedom from corporal or capital punishment; autonomy, within legal limits, for small nationalities and national minorities; and the privilege of any citizen to use his own language in communicating with the government.

<sup>1</sup> English translation by A. Miller, secretary of the mission of the Far Eastern Republic at Peking; published by the *Journal de Peking*, Peking.



Article IV, on "The Government," devotes a section to the central government, another to the local authorities, a third to the judiciary, a fourth to the state board of control, and a fifth to national self-administration.

The central government is constituted of a legislature, the "National Assembly," and an executive body, the "Government." Both are representative of the people, in whom the sovereignty is vested. The National Assembly is composed of a single chamber, elected from and by all qualified citizens eighteen years old or over upon a basis of proportional representation. With the electoral quota placed at 15,000, the National Assembly should have about 135 members. Sanity and freedom from legal restraint are the only qualifications necessary to mature persons either for voting or for election to the assembly. The duration of an assembly is two years. Two regular sessions are held annually, beginning on February 1 and November 1, and extending at the will of the assembly, provided they do not interfere with the harvest. Extra sessions are provided for. Members are exempt from liability to arrest unless caught *in flagrante delicto*; even then release may be secured by the president of the assembly. The assembly may arrest and prosecute its members.

The legislative power is vested in the National Assembly; in addition to the broad grant of power to legislate concerning "state and social life," there is specific enumeration, as the subjects of assembly action, of the consideration of all treaties, finance,—including the budget, accounts, loans, and concessions not within the exclusive control of the "Government"—, the currency and monetary system, the organization of the armed forces, the control over administration, the granting of amnesties, the declaration of war and the conclusion of peace, and "the determination of other questions at its own discretion." During the recesses of the assembly the "Government" may issue provisional laws dealing with urgent matters; but these require the subsequent approval of the assembly.

The executive, called the "Government," is collegiate, constituted of seven members, qualified simply as voters, elected by the National Assembly for a two-year term. There is no provision to prevent the assembly from electing its own members. The Government is empowered to appoint and dismiss the president of the council of ministers and the comptroller-general, the ministers and their assistants, upon the president's recommendation, certain other officers, and the foreign representatives of the republic; to convoke special sessions of the

National Assembly, to publish the laws and promulgate provisional laws, and to suspend or annul orders of the council of ministers considered not to be in harmony with the constitution or laws. Together, the Government and the council of ministers possess the supreme executive power, being authorized to conduct administration and direct policies, to organize the military forces, to give preliminary consideration to terms of peace, and to defend the state's territorial integrity; to conclude loans, negotiate treaties and grant concessions with the approval of the assembly; to draft the budgets, and to apply, to laws deemed unconstitutional, a suspensory veto which the assembly may over-ride by a two-thirds vote. All acts of the Government, including the promulgation of provisional laws, must be counter-signed by the council of ministers or a minister, whose endorsement carries with it responsibility to the National Assembly. The Government may be prosecuted for high treason by resolution of the National Assembly.

To share in formulating and to administer the policies of the Government and National Assembly, a council of ministers is set up, appointed, as above noted, by the Government. The number and functions of the constituent departments are left to legislative determination. The president of the council, whose position is that of a premier, may hold a portfolio. The qualifications of a voter are sufficient also for a minister; he may be concurrently a member of the National Assembly but not of the Government. The comptroller-general attends cabinet meetings in a consultative capacity. Ministers have the right to appear before the National Assembly "on questions relating to their respective departments." They are obliged to answer questions and interpellations in the National Assembly. They are held responsible to the assembly for their acts, individually and as a cabinet, and are liable to prosecution by the National Assembly for non-political offences. Upon an assembly vote of no confidence the cabinet must resign.

An interesting sub-section defines four modes of initiating legislation: the first, by resolution of a thousand voters, accompanied by a draft of the proposed law; the second, by the council of ministers as a body; the third, by the Government; and the last, by any five members of the National Assembly.

Five grades of "local" government are provided for: the province, county, urban district, rural district and village; each possessing a considerable degree of self-government, and each required to enforce national law in accordance with the directions of the central government and under the supervision of provincial emissaries appointed by

the central government. Local by-laws may not conflict with the laws of the central government, and are liable to abrogation by the latter.

The government of a province includes an assembly, elected for a two-year term, directly and with proportional representation, and an administration, chosen for the same term by the assembly and authorized to organize departments, eleven of which are specially designated. Coördination is provided for between the ministries of the national and provincial governments.

The province, county, rural district, and village form a descending hierarchy, each rank of which has such jurisdiction over those beneath it as is necessary to the administration of its powers. In addition, cities of 20,000 or more inhabitants form separate counties, while smaller cities form urban districts having the same status and organization as rural districts. In each locality a local elective council is the agency of self-government.

The section on the judiciary begins with the statement: "The People's Court shall be the only court in the territory of the republic." The word "court" is here used in the sense of judicial system. The People's Court is declared to be independent of other government authorities. The number of judges, their qualifications, competence, terms, and procedure are left to legislative determination. Judges are elective and are subject to removal before the end of their terms by the court itself. The jury system is to be employed. Special courts may be organized by statute. Appeals are forbidden, but a court of cassation is provided, empowered to annul the judgments of a lower court.

A "National Board of Control," which is "independent and is directly subordinated within its jurisdiction to the legislative authorities," constitutes a sort of permanent parliamentary commission for the investigation and supervision of the finances of every agency of the government, both central and local, military, civil and commercial. The organization of this body appears to be somewhat cumbersome, composed as it is of a college of state control, a council of state control, a central state board of control, a local department of the state board of control, and a field department of the state board of control. The college and the council of the board appear to have general functions, while the central state board, the local department and the field department deal respectively with the revenues and expenditures of the Central Government, the local governments and the armed forces. Under the local department are "colleges" for each province and county.

Of the members of the central college the workers choose one, the peasants three, and the indigenous autonomous nationalities one; the other members are the comptroller-general and two assistants. The provincial and county assemblies have the right to elect three and two members respectively to the provincial and county colleges, the other members being drawn from the composition of the state board. The powers of the National Board of Control are not final; it may not interfere with the executive branch. Its powers are, however, wide enough to permit the board to secure complete information on the management of every phase of governmental expenditure and thus to equip the National Assembly and the local assemblies for the effective handling of their budgets.

The final section of the fourth article defines the powers of self-government accorded to "indigenous nationalities and national minorities." It provides for a ministry of national affairs, to control and guide such groups. For the Buriat-Mongols, and for such important minorities as the Ukrainians, Jews, Koreans, and Tartars, self-governing assemblies and administrative organs are authorized, and these bodies are to exercise autonomy "in matters pertaining to the national culture" of the minorities represented by them. A definite territory, with boundaries to be fixed by law, and the privilege of national courts in addition to a separate assembly and administrative system are accorded to the Buriat-Mongols. The powers thus given are, of course, subject to the limitation that national law may not be denied precedence.

Article V deals with the "National Economic Organization." It abolishes private property in land, forests, waterways, and their resources. It declares all land to be the property of the workers as a national fund and provides for apportionment of the land with due regard to climate and soil. Except in special cases legally specified, the basis of the right to use the land is to be personal labor. A recent writer has pointed out the interesting fact that the land in Siberia has always been regarded as the property of the government. The latter has granted occupation rights to individuals, but the occupiers have not enjoyed the rights of gift or sale to third persons. The only exceptions to this rule were cities and other municipalities and certain pieces of land specially exempted under laws of 1806, 1822, and 1860 in favor of state officials and Cossacks. In 1916 only about one per cent of the farms and other privately occupied land areas of Siberia were actually owned by their possessors.<sup>2</sup>

<sup>2</sup> Bourrier, "La République d'Extreme-Orient," in *La Chine* (Peking) Jan. 1, 1922.

Work is made an obligation of every citizen. The constitution sets the normal working day at eight hours, the night at six hours. Every worker must have a weekly rest-period of at least forty-two consecutive hours. No person may work before he is sixteen years old; between the ages of sixteen and eighteen his maximum working day is six hours. Except in unusual circumstances over-time is forbidden in all occupations but that of farming. Women-workers receive special protection in several clauses. The government is authorized to establish minimum wages. Workers are guaranteed participation in governmental economic agencies, in government enterprises, and in government control of private enterprises. They are to be protected by a committee for the inspection of labor welfare, elected by the unions, and by insurance against all risks in all enterprises, public or private, the premiums to be paid by employers without prejudice to wages. One month's holiday in twelve is guaranteed.

In contrast with the provisions affecting real estate and natural resources, those respecting movable and immovable property maintain the "inviolability" of private ownership. Leases and concessions are authorized for the development of natural resources, provided they do not exceed terms of thirty-six years. The government is instructed to assist rural development.

The provisions regarding taxation are not unusual. The progressive income tax, property taxes, taxes on title-deeds, inheritance taxes, unearned increment taxes, taxes on gifts, etc., with the revenue derived from state enterprises, constitute the credit side of the national budget.

Article VI is concerned with national defence. "The people in arms are the sole defenders of their own liberty;" and therefore it is provided that there shall be universal military training, so arranged as not to interrupt work, for all male citizens between the ages of eighteen and forty-five. The army consists of conscribed youths of twenty and volunteers legally called for who have reached the age of eighteen.

Education is the subject of Article VII. The republic declares itself to be responsible for a broad education for all citizens, the workers first. Religious teaching is forbidden in all schools, public or private, "following a general curriculum." Education is free and compulsory for all persons of school age. Coeducation is ordained for the government schools. "Labor principles" are to form the unifying basis for all public educational endeavor. The small national groups are authorized to establish language schools.

Article VIII describes the national arms and flag. The arms consist of a red shield having upon it a pine garland, in the center of which is a rising sun and a five-pointed silver star; between the sun and the star, in the center of the shield, an anchor and a pick-axe are crossed over a sheaf of wheat. The letters D, V, and R, for *Dal'ne Vostochnaya Respublika*, appear to the right, left, and below the garland. The flag also has a red ground quartered to the upper right by a square of dark blue upon which are the letters D, V, and R, arranged in a triangle.

Article IX provides the processes of amendment. Amendments may be initiated by one-third of all the members of the National Assembly in session, by a provincial assembly, by the Government, or by 10,000 voters; in every case they must be ratified by a two-thirds majority of a two-thirds quorum in the National Assembly.

Finally, Article X prescribes that the order and time for the election of the first National Assembly and Government shall be determined by the Constituent Assembly, and lists the president, assistants, and secretaries of the latter body.

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## NOTES ON INTERNATIONAL AFFAIRS

EDITED BY CHARLES G. FENWICK

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**The Institute of Politics.** The second session of the Institute of Politics, held at Williamstown during the month of August, successfully carried forward a distinctive project for the study of international relations. The inauguration of the Institute during the preceding summer, under the auspices of Williams College, was the subject of considerable interest and discussion. Most of those who attended this initial session carried away the conviction that an institution of original and conspicuous merit had been launched. The second session amply justified these expectations. Its record should contribute much to the prestige of the Institute and create additional interest in its constructive purpose.

The method by which the Institute proceeded was substantially the same through both sessions, and consisted of a series of round-table conferences, directed by authorities on various topics, and a course of public lectures delivered by distinguished scholars, publicists, and statesmen, many of whom were from foreign countries. Its membership was largely drawn from men and women on college and university faculties, diplomatic and other government officials, officers of the army and navy, international bankers, editors and journalists. Approximately two hundred members were enrolled this summer and the program provided fourteen round-tables and six public lecturers.

In the course of its development, the Institute was naturally confronted with the problem of maintaining the discussions at the round-table conferences upon an authoritative basis and of fulfilling also an educational function for the membership at large. This dual purpose was in a large measure achieved. Each of the enrolled members attended one, or possibly two, of the conferences as a participating member, and, by a tacit understanding, discussion was reserved to these and to the visiting members who spoke at the invitation of the round-table leader. This arrangement made possible one of the most valuable features of the Institute,—the privilege of members to attend con-

ferences in addition to the one specifically chosen, while the subject-matter of each conference was in the hands of those who had chosen it as a major interest. The lecture courses were open to the members and to the public at large.

The increase in the number of round-tables this session reflected wisely the experience of the previous year. The personnel of the Institute warranted the presentation and study of topics after the manner of graduate seminars, and the success of the undertaking lies perhaps in a continuing emphasis on this idea. The high ability of the conference leaders was supplemented this summer by the presence of a number of participating members who, likewise, were authorities in some special field, and the special reports of these members enhanced the value of the conferences. Certain of the public lecturers, notably Mr. Curtis and Mr. Kerr, Dr. Redlich and M. Recouly, joined actively in the discussion-groups, adding interest and distinction to the meetings. A number of exceedingly able officers of the army and navy were present, and these, together with persons actively engaged in international affairs, constituted an element which the ordinary academic seminar is unable to provide.

The public lectures, although reduced this year in number, retained an important place on the Institute program. In certain instances they set a standard of rare excellence, approaching in a profound and courageous spirit some of the fundamental problems of international politics. Nothing on the program of either session of the Institute surpassed in constructive thinking the addresses of Mr. Lionel Curtis and Mr. Philip Henry Kerr. Other lecture courses were able presentations of the respective topics. The interest and informing quality of a few, however, was impaired by a previous acquaintance on the part of many listeners with certain elementary facts of history. The adjustment of the lecture courses in the general scheme of things at Williamstown remains yet to be worked out. The experience of the past two sessions indicates, however, that the major interests of the members will continue to center in the conferences, except for public lectures of outstanding merit.

The administration of the Institute, conducted by officials and faculty members of Williams College, was efficient in all respects. Courtesies in every relationship were extended to the members and every provision was made to insure the comfort and pleasure of their visit. The hospitality of the college community and of the Williamstown colony gave to the summer gathering a cordial and delightful social aspect.



On the whole, the second session of the Institute was characterized by an intellectual distinction appropriate to its purpose. For a period of four weeks free and vigorous discussion dwelt upon vital problems in international affairs. The purpose and organization of the Institute naturally precluded its official sponsorship of particular aims or policies concerning the problems to which it was devoted. It presented, in contrast, a medium through which the ideas of individuals might be expressed, from a common interchange of which there should issue an influence of singular usefulness and power.

The program of the second session is given below:

#### *Lecture Courses*

I. A British Outlook on the International Problem: The Honorable Lionel Curtis; The Honorable Philip Henry Kerr.

II. Modern Brazil in its Political, Economic, and Social Aspects: The Honorable Manoel de Oliveira Lima.

III. The Recent Aims and Political Development of Japan: Dr. Rikitaro Fujisawa.

IV. Nationalism, Imperialism and Internationalism in Europe, an historical survey: Dr. Josef Redlich.

V. The European Situation as seen by a Journalist: M. Raymond Recouly.

VI. Attitude of the Jugoslavs towards the Near East Problem: Professor Michael I. Pupin.

VII. Contemporary Indian Politics: Professor Claude H. Van Tyne.

#### *Round Table Conferences*

I. Foreign Policies of Soviet Russia: Leader, Dr. Alfred L. P. Dennis, Washington, D. C.; Secretary, Mr. Emanuel Aronsberg.

II. Problems of Eastern and South Eastern Europe: Leader, Professor Robert H. Lord, Harvard University; Secretary, Mr. Emanuel Aronsberg.

III. The Growth of Canadian Autonomy in the Empire: Leader, Dr. Adam Shortt, Ottawa; Secretary, Miss Margaret Porteous.

IV. State Succession and Peace Treaties: Leader, Professor Jesse S. Reeves, University of Michigan; Secretary, Mr. Lloyd Haberly, Oxford.

V. New Questions in International Law: Leader, Professor George Grafton Wilson, Harvard University; Secretary, Mr. Lloyd Haberly, Oxford.

VI. Central America and the Carribean Area: Leader, Dr. Leo S. Rowe, Director-General, Pan-American Union; Secretary, Mr. William P. Montgomery.

VII. Historical Survey of the Diplomatic Relations of the United States and Latin America: Leader, Dean John H. Latané, Johns Hopkins University; Secretary, Dr. Charles T. Thach, Johns Hopkins University.

VIII. The Pacific Ocean and Its Problems: Leader, Professor George H. Blakeslee, Clark University; Secretary, Professor Henry M. Wriston, Wesleyan.

IX. Modern China, Its Problems and Policies: Leader, Dr. Stanley K. Hornbeck, Washington, D. C.; Secretary, Professor Harold M. Vinacke, Miami University.

X. Japan's Foreign Policy in Siberia and China: Leaders, President David P. Barrows, University of California; Rear Admiral Austin M. Knight, U. S. N.; Secretary, Professor Harold M. Vinacke, Miami University.

XI. The Rehabilitation of Europe: Leaders, Dr. B. M. Anderson, Jr., Mr. Paul D. Cravath, Mr. David F. Houston, Mr. Paul M. Warburg; Secretary, Mr. Henry Mills.

XII. The Problem of Interallied Debts: Leader, Mr. Oscar T. Crosby, Washington, D. C.; Secretary, Professor James W. Bell, Williams College.

XIII. International Commercial Treaties and Policies: Leader, Mr. W. S. Culberson, Vice-Chairman of the Tariff Commission, Washington, D. C.; Secretary, Miss R. M. Ridgway.

XIV. International Journalism and International Electrical Communications Service: Leaders, Mr. Arthur S. Draper, European Manager for the New York Tribune, London, Mr. Walter S. Rogers, Washington, D. C.; Secretary, Mr. Ralph Courtney.

*Round-Table Conferences.* The subject-matter of certain conferences this year was a logical continuation of topics considered at the session last summer. There was, however, no element of repetition in the proceedings and the six additional round-tables reflected the growth and comprehensiveness of the Institute program. The following notes on the various conferences are necessarily radical condensations, and indicate only some of the more outstanding topics.

International economic problems constituted an important topic on the program. Under the general titles of the "Rehabilitation of Europe," and the "Problem of Interallied Debts," two round-tables

discussed these questions. The Balfour note, published shortly after the Institute opened, came opportunely from the standpoint of these discussions.

Each of the four leaders of the conference on the rehabilitation of Europe brought forward constructive programs for the alleviation of the European situation. There appeared to be a general agreement in these proposals that the following elements are involved in a sound solution of existing difficulties: a rational, economic adjustment of the German reparation problem; the rectification of public finances in Europe and an immediate return to some definite relation of currencies to gold; the elimination of trade barriers in Europe; an adjustment of the interallied debt problem; and, finally, the provision, under proper conditions, for new capital from the United States, Great Britain, and other countries to assist in the industrial revival of continental Europe. Steps towards the rehabilitation of Europe should not await, these leaders asserted, the return of Russia to a condition of reasonable normalcy. Although the restitution of economic life will be incomplete without Russia, that country is by no means essential and much can be done by western Europe and the rest of the world. The problem is in reality one of arresting the further decomposition of Europe.

The question of German reparations was the subject of a special memorandum prepared by Mr. Cravath and concurred in by Dr. Anderson and Mr. Warburg. There should be a moratorium of from three to five years on reparations; the total amount should be reduced to a capital sum not exceeding seven or eight billions of dollars; the amount should be definitely fixed, and payments should be made in moderate installments over a long period of years. There should be no seizure of German railroads, natural resources or industries, or of gold or foreign balances in German banks. Furthermore, if Germany is to develop the volume of export trade necessary for liberal reparation payments irrational tariff barriers must not be erected to deprive her of reasonable opportunities of access to markets of the world.

There can be no sound prosperity in the United States, these conference leaders urged, in the absence of improvement in Europe, and our own economic interests require the coöperation of the United States. In the words of Mr. Houston, "The United States ought not to be afraid to sit around the table and to discuss with Europe all present economic problems." Nothing is to be gained, however, from making large loans to Europe under present conditions. Radical reforms are necessary, first, to give proper security for large loans, and secondly, to make

sure that loans, if made, would really do lasting good. The European situation cannot be solved in piecemeal fashion. Budgets and currencies, reparations, interallied debts, and foreign loans are all so intimately tied together that no one can be handled by itself but they should be adjusted together in one comprehensive settlement.

In a noteworthy address, delivered at the concluding session of this round-table, Dr. Anderson brought forward a series of proposals which Great Britain and the United States, sitting as creditor nations, might make to continental Europe. First, public finances should be balanced by a drastic curtailment of expenditures, including outlays for military forces, and a drastic increase in taxation; floating debts should be funded into long time issues. Secondly, the fluctuating irredeemable paper money should be restored to a gold basis by the resumption of gold payment; pre-war parities are impossible and new and lower gold pars should be established. Thirdly, the numerous trade barriers which the different countries of Europe have established should be eliminated. The reparation settlement noted above was also deemed an integral part of this program.

In consideration of these reforms, Great Britain and the United States ought to be willing to cancel the debts owed them by their continental allies. This does not involve a cancellation of the British debt to the United States. With a revival of continental Europe, this debt can readily be paid. As a further consideration for these reforms, the bankers in the United States, Great Britain and Japan would be ready to place large blocks of new European securities with their respective investors, it being understood that the proceeds of these new loans were to be used for really productive purposes.

To many of these proposals, Mr. Crosby, as leader of the conference on interallied debts, raised a dissenting voice. He suggested for discussion the question as to whether the United States government has the constitutional right to present the wealth of American citizens, taken from them by taxation, to foreign governments through the process of debts cancellation. "Assuming even this power, is there not," he inquired, "a moral limitation to such action, due to the fact that when these funds were raised the public was lead to believe that the matter was one of loans and not of gifts?" In the event of debt cancellation, it would be reasonable to reconsider certain advantages accruing to Great Britain and France under the Versailles treaty which were accepted by the American government on the assumption that the debts in question would be paid. In the opinion of Mr. Crosby,

an extension to the countries of Europe of immediate relief from international obligations would probably encourage the forces of disorder prevailing there and correspondingly retard productive effort. He cautioned against a hasty policy towards allied debts on the part of the United States. Any estimate of the capacity of our debtors to pay is necessarily speculative and a figure now would probably discount the actual resources of Europe. No immediate steps should be taken other than to give the existing debt commission, or some similar body, the function of studying the problem and of acquiring information for the use of the government at some future time. With reference to the proposals to extend loans to European countries on condition of internal reforms, Mr. Crosby doubted if these states would accept such arrangements or abide by them if accepted. Investments under these conditions by the nationals of outside countries would invite government interference and lead to national policies provocative of war.

Economic factors in international relations received further consideration at the conference on "International commercial treaties and policies," conducted by Mr. W. S. Culbertson, vice-chairman of the United States tariff commission. The comprehensive program of this round-table surveyed, first, the tariff treaty policy of the United States with special reference to the interpretation of the most favored nation clause and to the use of the penalty and concessional method. Several sessions were devoted to the study of the development of protection and preference in the British Empire. The growth of autonomy and independence in the self-governing dominions has developed, Mr. Culbertson pointed out, the most elaborate system of tariff preference in the world. These preferences are by some supported on political grounds, but the question constantly occurs whether from an international standpoint these preferential arrangements are consistent with the independent autonomous status of the self-governing dominions. The open and closed door policies were examined in connection with their bearing on the control of raw materials and fuel. A special representative of the United States shipping board discussed the status of American shipping and the purpose of the merchant marine bill pending before Congress. The naval authorities present urged the importance of merchant ships as a vital factor in naval preparedness.

At the concluding sessions Mr. Culbertson submitted a series of recommendations concerning an international commercial policy for the United States. The United States should proceed immediately to negotiate a series of new commercial treaties. With many important

nations we have no such treaties and many of the existing ones are ill-adapted to the new economic and financial conditions of the world today. Our future commercial policy should adopt the unconditional form and interpretation of the most-favored-nation clause. We could thereby insist upon equality of treatment in foreign markets, since concessions in our tariff would be automatically extended to other nations and leave no excuse for discrimination. As a supplement to this treaty policy, the President should be given power to impose additional or penalty duties on the whole or part of the commerce of any nation which discriminates against our overseas commerce. The United States should oppose the further extension of colonial empires unless the extension is accompanied by guaranties for the maintenance of the open door, and should protest any modification or abrogation of existing open door agreement. Mr. Culbertson advocated the calling of an international conference to consider the larger questions of commercial policy.

Two conferences were devoted to certain aspects of the political situation in continental Europe. Dr. Alfred L. P. Dennis led the round-table on the "Foreign policies of Soviet Russia;" while "Problems of eastern and southeastern Europe" were studied at the conference conducted by Professor Robert H. Lord.

Soviet foreign policy in its various aspects was traced by Dr. Dennis from the treaty of Brest-Litovsk to the struggle for recognition at the Genoa conference. This survey embraced discussions on the initial Soviet attitude towards the Allies and Germany; the development of hostility towards the Allies after the spring of 1918; Soviet relations with Poland and the Baltic states; their policies in the Ukraine, the Caucasus, and the Near East; Asiatic policies and Soviet imperialism. Special emphasis was placed on the relationship of Soviet foreign policy to the Communist International and to the program of world revolution.

Soviet policy, it was pointed out, regarded the Allies and Germany with equal disfavor in the autumn of 1917. This balance was upset in the spring of 1918 by a strong resentment towards the Allies, due to the presence of Japanese troops in Siberia and the subsequent allied interventions. The treaty of Brest-Litovsk was regarded by the Soviets as a temporary policy, designed to permit the consolidation of the revolutionary program at home, and in time the apparent concessions to Germany would be regained for sovietism through the force of revolutionary propaganda. Indeed, underlying much of the

surface generosity of Soviet foreign policy is the reserve principle that ultimately, with the coming of world revolution, the concessions made from time to time will be meaningless. In the recognition of the Baltic states this principle was apparently applied or was, at all events, put forward at home by the Soviets to justify these settlements.

The relation between Soviet foreign policy and the Communist International has at times been that of an interlocking directorate. Frequently the same individuals have actively directed both, and the services of the two agencies have been put to the common purpose of world revolution. Since 1921 Soviet policy has diverged somewhat from that of the International and tends to approach the traditional policy of pre-war Russia.

The opening sessions of the conference on problems of eastern and southeastern Europe were devoted to a study of the three Baltic republics, Esthonia, Latvia and Lithuania. They were considered in comparative fashion with respect to area, material resources, racial characteristics and political organization. The size of these republics, Professor Lord observed, compares favorably with many of the states of western Europe and their national self-consciousness, although of recent origin, seems to justify their claim to independence. The strategic position of the Baltic republics has earned for them the title of the "cockpit of eastern Europe," yet the peoples of these regions are free from imperialistic ambitions and eager for peace and stability. Much has been accomplished between the republics in the way of economic rapprochements; and the Treaty of Warsaw, March, 1922, marked the formation of the Baltic League, a protective military alliance. The relation of the Baltic republics to Russia was the subject of special consideration. The interests of Russia in the Baltic lands are commercial, military and naval, and the question arises as to whether in the future Russia will be satisfied with the present arrangements. The opinion was expressed that the Baltic states would not take undue advantage of their mastery of the Baltic ports and would be disposed to make concessions guaranteeing Russia's outlet to the sea.

Discussions at the round-table turned next to problems in southeastern Europe, dwelling particularly on the internal conditions of the states in this region and upon the factors which determine their foreign policy. The outstanding problem of Yugoslavia is the relations between the Serbs, Croats and Slovenes. These three peoples desire a common state, but differ profoundly as to the nature of its political organization. The Serbs have tended towards a unified, central kingdom; the Croats

and Slovenes desire decentralization or federalism. The constitution of June, 1921 was a complete victory for the unitary program, but was adopted through methods of flagrant political corruption at the hands of the Serbian element. There is consequently agitation and need of revision. In Bulgaria since 1919 internal developments, under the leadership of Stambuliski, have moved in the direction of the "Green International," or the dictatorship of the peasantry. Power and office are monopolized by the peasants and the most drastic agrarian reforms outside of Russia have been enacted. Numerous branches of economic life are nationalized and taxation shifted largely to the bourgeois. The general discontent of the educated and propertied classes indicate a latent crisis in the political life of the state. Hungary, the seat of reaction in Europe, is once more officially a monarchy under her old constitution and the regency of Admiral Horthy. The Exclusion Act of November 1921 deprives the Hapsburgs of their rights to the crown, but does not preclude their restoration by election. These internal conditions in Hungary furnish reasons for apprehension on the part of neighboring states. Czechoslovakia, Jugoslavia and Roumania sought safeguards in the Little Entente, with which Poland is now virtually a partner through the Czecho-Polish treaty of November, 1921.

Problems of the Pacific Ocean and the Far East were assigned to three conferences on the Institute program. Professor George H. Blakeslee conducted one on the "Pacific ocean and its problems;" another under the title of "Japan's foreign policy in Siberia and China" was led jointly by Rear Admiral Austin M. Knight and President David P. Barrows; and the third on "Modern China, its problems and policies," was conducted by Dr. Stanley K. Hornbeck.

The islands currently designated as the Pacific mandates were first discussed in Professor Blakeslee's conference. Their relative economic and strategic importance was dwelt upon; the character and achievements of German rule prior to 1914 were compared with the administration by the powers to which the islands were allotted under the mandate principle. From an economic standpoint, the Australian mandate over New Guinea is the most important. In the former German portions of Samoa, however, now under the administration of New Zealand, American trade ranked second in importance until the recent introduction of a preferential tariff on British imports.

The strategic importance of the Pacific islands led to a discussion of naval policy and the Washington conference. Special reports were presented by naval experts showing the effect on naval strategy of the



Washington agreements regarding fortification and naval bases. The modification of American naval power resulting therefrom led the conference into an extensive examination of the political clauses of the Washington treaties as effective means of safeguarding American interests and of promoting peace in Asia.

Subsequent sessions of this conference considered the origin of the mandate principle and the questions in international law arising from its operation. The United States asserted no voice in the allocation of mandates, but claims a legal title in these regions as one of the allied and associated powers. The Yap-mandate treaty was studied in this connection as an expression of the rights claimed by the United States in class C. mandates and recognized by Japan. Possibly this treaty will be used by the United States as a standard in its negotiations with other mandatory powers whose titles are yet unrecognized by the American government.

American insular possessions and certain policies of Australia and New Zealand came within the scope of the conference. An evaluation of American rule in the Philippines was made and considerations for and against immediate independence were discussed. Expert opinion generally concurred in the advisability of prolonging American rule. Two principles were noted as outstanding in Australian foreign policy; "white Australia," and the maintenance of a British Monroe Doctrine in that region of the Pacific. Both Australia and New Zealand desired to annex the former German islands, and, as mandataries over these areas, their respective policies approach somewhat the original purpose.

The conference on "Japan's foreign policy in Siberia and China," conducted for the first two weeks by Admiral Knight, considered the strategic situation of Japan with reference to the continent of Asia; militarism in Japan and its effects on national policy; and the historical development of Japan's foreign continental policy. The sweep of the Japanese islands from Sakhalin to Formosa dominates the coast and ports of the continent. Command of coast ports involves command of rail and water-ways leading to the interior, making possible the control of extensive interiors rich in economic resources. Partly by design, partly because of fortuitous circumstances, the railroads in which Japan has an interest give a pronounced strategic control of Peking, cutting it off at both north and south. From the military point of view, the power to control ports and to seize railways make it possible for Japan, in the event of war, to occupy all strategic parts of China with effective military forces within thirty days. The racial origins of the Japanese

peoples were next discussed, and their military traditions were shown to provide a logical background for their modern political organization and policy. Japanese continental policy developed rapidly after 1904 with the evident aim at control of Manchuria. Up to this time it was, in general, dictated by necessity, apprehensive of the Russian advance towards the Pacific and concerned with the status of Korea, the control of which is deemed essential to Japanese security. The record subsequent to 1905 is open to serious criticism.

The period from 1905 onward formed the basis of President Barrow's discussions. He placed before the conference a series of thirteen propositions which reviewed in comprehensive fashion the record of Japan in China, Manchuria and Siberia. The proposals communicated by the Japanese military administration in the spring of 1918 to General Horvat at Harbin and to the Russian Far Eastern committee at Vladivostok, to give military aid in return for vast, exclusive concessions in Siberia, reveal an intention to create in Siberia a sphere of interest analogous in character to that sought in Manchuria and Mongolia. Attention was directed to the violation by Japan of the agreement with the United States regarding the strength of forces for the Siberian intervention, and to the action of the Japanese army in transporting commercial goods into Siberia under cover of military shipments, which deprived the Chinese and Russian administration of their established customs dues. Further discussion dwelt upon the occupation by Japanese troops of the Primorsk, the establishment of Japanese civil regime in northern Sakhalin, and the appropriation of Russian mineral properties within these regions.

"The promise of future friendly relations between the Chinese, Russian, Japanese, and American peoples lies," said the conference leader, "in the full and prompt realization of the assurances given by Japan's representatives at the Washington conference, and in the consummation of the policy of withdrawal announced by the present Japanese administration."

The conference on "Modern China, its problems and policies" discussed the resources and geography of China; the problem of education; constitutional and political development in China since 1911; the development of foreign rights and interests within the empire; the open door policy; China at the Washington conference; international consortiums and financial problems.

Up to the time of the Washington conference, Dr. Hornbeck explained, attempts had been made to limit the scope of the open door

policy to the Hay circular of 1899. In reality the doctrine includes the pronouncements made by the American government up to 1904. While it is true that the original Hay note recognized the existence of spheres of influence and sought only an equality for the commerce of all nations within these areas, the American secretary soon discovered that the preservation of Chinese territorial integrity was essential to his purpose and expanded the policy accordingly. The open door is a traditional American policy, given application by Secretary Hay, and attempts to project the spirit of the Monroe Doctrine into the Far East. The principle of a Japanese Monroe doctrine for Asia breaks down when Japan attempts to build up exclusive interests in China.

The fundamental political problem in China today is the conflict between centralization and local autonomy. The Chinese aptitude is for local government, and many feel that provincial autonomy must precede national reconstruction. The process may require a generation, but greater prospects will attend its development from below than would follow a centralized dictatorship. A substantial part of China's gain at the Washington conference lies in the possibility now afforded for the development of local institutions without the impact of foreign influence.

The conference on the "Diplomatic relations of the United States and Latin America" was conducted by Dean John H. Latané of Johns Hopkins University. Chief emphasis at this round-table was placed on the evolution of United States policy towards Latin America, and the method of treatment was largely, though not exclusively, historical. The South American wars of liberation was the first topic discussed, and the respective attitudes of the United States and Great Britain towards this movement were studied from both the legal and the political points of view. An historical study was next made of the formulation of the Monroe Doctrine. The impetus to the enunciation of this policy proceeded from a European source, namely, the activities of the Holy Alliance, and the discussions of this topic were introduced by a review of the contemporary European situation. The three lines of diplomatic activity that led to the formation of the doctrine were considered in detail: the Rush-Canning negotiations, the negotiations with Russia, and the principles of the Holy Alliance. It was further sought to develop the respective policies of Jefferson, Madison, Adams and Clay, and to evaluate the relative merits of the adoption at this time of a strictly American doctrine as opposed to a general doctrine applicable to all the world. Finally, considerable time

was devoted to an analysis of the doctrine as originally enunciated, and to its applications and official interpretations. The question of the maintenance of the Monroe Doctrine was investigated and the relation of its maintenance to the existence of the European balance of power.

Later sessions of the conference studied the three main phases of the expansion of the United States to the south and the southwest. Final sessions were devoted to Latin America and the World War. Reasons were sought for the action of the several Latin-American states in entering the war, breaking diplomatic relations with Germany, or remaining neutral. Special attention was directed to the relation of these respective policies to the general question of Pan-Americanism, in order to determine the extent to which the solidarity of the states of the two continents was injured by their failure to act as a unit in this time of crisis.

The conference on "Central America and the Carribean Area," conducted by Dr. Leo S. Rowe, studied the more recent political developments in this region. Following a review of the expansion of the United States in this area, an examination was made of the various treaties and conventions existing between the United States and the Carribean republics. American administration in Haiti and the Dominican Republic was the subject of several sessions, and authorities on this subject described various aspects of the American regime. The movement towards federation was considered through a study of the 1921 constitution of the Federal Republic of Central America.

The Mexican question was introduced by an historical outline of events since the Diaz regime. American policy towards Mexico during this period was considered in relation to its effect on internal affairs in Mexico and on the broader issue of Pan-Americanism. Mexico under General Obregon was the concluding topic, with special reference to provisions in the constitution and laws of Mexico which have thus far precluded recognition of the Obregon government by the United States.

The conference on the "Development of Canadian autonomy in the empire" was conducted by Dr. Adam Shortt of Ottawa. In the main a two-fold division of the subject was followed. First, the development of constitutional autonomy with respect to domestic matters was studied, and, secondly, attention was directed to the growth of autonomy with reference to foreign affairs. The leader presented first an historical resumé of the factors which retarded the development

of constitutional autonomy. A detailed study was next made of the development of responsible institutions. After a period of political tutelage it was reserved for Lord Elgin to shift the responsibility of government to Canadian leaders, and to assume in Canada the position of the King in England. Responsible government was soon afterwards established in all the provinces and the country obtained in essence and in fact entire control of all its domestic affairs.

The logical development was now towards autonomy in the control of external affairs. To this topic the conference devoted subsequent sessions, tracing the growth of autonomous control over such subjects as the tariff, exchange, shipping and immigration. Unfettered by written agreements, the central Canadian government has been able to share in the complete flexibility and re-adjustment of the British constitution as it pertains to the status of the self-governing dominions.

International legal questions were studied at two conferences, one on "State succession and peace treaties," conducted by Professor Jesse S. Reeves, and the other under the title of "New Questions in International Law," with Professor George G. Wilson as leader.

Questions connected with state succession are essentially justiciable, Professor Reeves observed, and are admirably fitted for determination by the International Court of Justice. The period from 1648 to 1914 had been largely one of unification and absorption of states, and international law writers had studied the problem from that viewpoint. The World War introduced, however, a process of disintegration. Two types of succession states emerged: the peace treaty states, such as Poland and Czechoslovakia, and the non-treaty states represented by Finland and the Baltic republics. With respect to the former states, the treaties themselves may be studied as the source of rights and obligations, but with the latter states international law will decide the questions.

The treaties of the allied and associated powers with the succession states of the former Austro-Hungarian empire were the subject of reports relating to the status of pre-war treaties, the allocation of public debts, and the adjustment of private property rights. Other sessions of the round-table were devoted to a study of the principles of state succession which would probably apply to such areas as the free city of Danzig, the Saar Basin, and the mandate territories. Where rests the legal title to such areas; what is the allegiance of their inhabitants; what are the legal rights and duties of the mandatary powers in the various classes of mandates?

Final discussion dwelt on the status of Soviet Russia from the standpoint of state succession. Does there come a point in the territorial disintegration of a state where the final remainder definitely breaks with the treaty obligations of the past? Is there ground for the claim that Soviet Russia bears to old Russia a relationship analogous to that of Finland or the Baltic republics? Upon this assumption the repudiation of debts need not follow, for each succession state might be apportioned an equitable share of the old obligation. Questions of this nature, it was suggested, should be worked out prior to the recognition of new states emerging from such backgrounds.

Professor Wilson opened the conference on "New questions in international law" with a review of the origin and organization of the International Court of Justice, followed by a discussion of the nature and scope of its jurisdiction. The question was raised as to the enforcement of the decisions of the court, which led to a consideration of sanctions. Public opinion has not always been effective and its real merit has diminished with the extensive use of propaganda. Economic pressure, international police, and written guarantees were in turn discussed with respect to their value and practical application. Sanctions to be effective, it was emphasized, should possess certainty and adaptability, and should, if possible, be made automatic.

The growth of populations and the setting up of state barriers has made immigration a matter of international concern. Questions as to the right to migrate and the obligations of a state to receive aliens have multiplied. The recent law of the United States restricting immigration was considered in this connection and its ethical justification discussed. Emigration, it was pointed out, rarely affords a solution to the problem of surplus population, but results often in an increasing birth rate in the country from which the emigrants come.

Succeeding sessions were devoted to the questions arising out of the operation of the mandate principle; the revival of the doctrine of angary during the World War; and concluded with a survey of the Washington conference treaties in their relation to international law.

"International journalism and international electrical communications service" was the subject of the round-table conducted by Mr. Arthur S. Draper, and Mr. Walter S. Rogers.

Under Mr. Draper's leadership, the conference discussed the organization of propaganda; the work of news gathering agencies and special correspondents; the influence of governments on the press; and the press as a factor in international relations. All newspapers except a

very few are dependent upon news agencies for national and international news. Consequently, the organization, practices, and standards of the agencies are matters of public concern. It was recognized that Reuters in England, Havas in France, and the Wolff agency in Germany were to a large extent government news distributors. It was the sense of the round-table that governments should take no part in the collecting and carrying of news, but should leave this function entirely in the hands of private agencies.

There is urgent need, Mr. Rogers said, for international agreements regarding electrical communication facilities. At present the United States is the only country not owning or operating entirely or in part its telegraphic services, which fact makes it largely impossible to develop world-wide telegraphic relations similar to that provided in a related field by the Universal Postal Union. The development of radio has introduced additional problems which require attention.

BRUCE WILLIAMS.

*University of Virginia.*

## NEWS AND NOTES

### PERSONAL AND MISCELLANEOUS

EDITED BY FREDERIC A. OGG

*University of Wisconsin*

The program for the Chicago meeting of the American Political Science Association, December 27-29, includes sessions devoted to international political science, political conditions in Europe, psychology and politics, theory, administration, and the relations of the executive and legislative branches of government. The session on international political science will deal with the scope and subdivisions of the subject, its relation to political and diplomatic history, international law as law for law students, and international law in its relation to constitutional law and government. Another session is given to political conditions and party politics in Europe, especially in England and Germany, radical parties, and proportional representation and its effect on parties. The program committee thinks it desirable each year to consider one of the other sciences in which there are developments of interest to the field of politics; this year it will be psychology, with particular consideration of the behavioristic studies. The session on theory will be devoted largely to a further discussion of the pluralistic theory. Two sessions will be occupied by the presentation and discussion of reports by the committee on political research appointed at the last annual meeting. The committee believes that the importance of the subject justifies a demand for time and full consideration by the members of the association. In the session on administration there will be papers on administrative law and the organization of administrative tribunals, and on the developments in the system of administration in England and France. Copies of the program will be mailed to members early in December.

Professor Thomas H. Reed, formerly of the University of California, has accepted a professorship of political science at the University of Michigan and will devote attention exclusively to municipal government. Professor R. T. Crane will henceforth give his time principally to political theory.



Dr. Paul S. Reinsch, formerly minister to China, was appointed, during the summer, financial adviser to the Chinese government and left for the Far East in July. He was accompanied by Professor S. Gale Lowrie, of the University of Cincinnati.

Mr. Milton Conover has left the staff of the Institute for Government Research to accept a position in the department of political science at New York University.

Dr. Chester Lloyd Jones, formerly of the University of Wisconsin, has accepted an appointment as commercial attaché at Paris.

Mr. George C. Robinson, recently a graduate student at Harvard University and the University of Wisconsin, has been appointed professor of government in Iowa State Teachers College.

Professor W. J. Shepard, of Ohio State University, gave two courses, American government and political theory, in the summer session of the University of Minnesota.

Mr. J. Dayton Voorhees has been promoted from instructor to assistant professor of history and politics in Princeton University.

Dr. Raymond L. Buell, who received his doctor's degree in politics at Princeton University in June, is occupying a tutorial position in the division of history, government, and economics at Harvard University.

Mr. Walter L. Whittlesey has been appointed instructor in history and politics in Princeton University.

Professor J. S. Young, of the University of Minnesota, gave courses in political science in the summer session of the University of Washington.

Drs. R. E. Cushman and Quincy Wright have been promoted to full professorships at the University of Minnesota.

The Bureau of Research in Government of the University of Minnesota has brought out a study on "City Charter Making in Minnesota" by Dr. William Anderson, director of the Bureau.

Dean Charles Andrews Huston, of the Stanford University Law School, died at his home in Palo Alto, in July, 1922. Dean Huston was not only a leader in the education of the legal profession, he was also a legal philosopher and a profound student of public affairs. His contribution to the teaching of political science at Stanford was very important. He gave in the law school the courses in international law, administrative law, and municipal corporations.

Professor E. A. Cottrell, Stanford University, delivered six lectures on municipal government at the National School for Commercial Secretaries, held at Northwestern University August 21 to 26, 1922.

The Second Western Summer School of Community Leadership was held at Stanford University, September 18-23, 1922, under the auspices of the department of political science of Stanford University, the California Association for Commercial Secretaries, and the American City Bureau. Some of the lecturers and speakers were: Charles H. Cheney, expert on city planning; Chester H. Rowell, a member of the California railroad commission, formerly editor of the Fresno Republican, member of the U. S. Shipping Board, etc.; C. A. Dykstra, secretary of the Los Angeles City Club, formerly secretary of the Civic Federation, Cleveland, and of the City Club, Chicago; Francis J. Heney, public leader; Ray Lyman Wilbur, president of Stanford University and president of the American Medical Association.

The League of California Municipalities held its annual meeting at Stanford University September 19 to 22, 1922, the guest jointly of the university and the city of Palo Alto.

The United States tariff commission has issued under the title *Handbook of Commercial Treaties* a useful contribution to the study of commercial treaties and tariff agreements. In addition to treaty texts, there is a comprehensive analysis of the stipulations contained in the commercial treaties of all nations.

The Illinois constitutional convention completed its work September 12, when the proposed new fundamental law was delivered into the custody of the secretary of state for submission to the voters at a special election set for December 12. The vote on adoption was seventy-seven to one. A million copies of the instrument were ordered printed and

sent to the voters. The most important change made in the final draft was the revision of the judicial article applying to the supreme court. The tribunal is increased from seven to nine justices, three of whom are to come from the Chicago district. The six downstate districts remain as they are.

A committee of citizens of Greater Boston, composed of George H. McCaffrey, executive secretary of the Boston Charter Association, Richard B. Hobart, Professor Arthur N. Holcombe of Harvard, Mary Tenney Healey, Mrs. Winona Osborne Pinkham, executive secretary of the Boston League of Women Voters, and Lawrence G. Brooks, has undertaken an intensive proportional representation campaign in preparation for the next session of the legislature, when a general permissive proportional representation bill for Massachusetts cities will probably be introduced and the porportional representation bill for the Boston city council introduced again.

In Belgium the use of the list system of proportional representation has been extended during the past year to the election of the provincial councils of the nine provinces and to the election of the portion of the Senate which is chosen indirectly by the provincial councils. The other members of the Senate and of the Chamber of Deputies have been elected by proportional representation since 1899.

**William Archibald Dunning.** On August 25, Professor Dunning passed away, after a lingering illness following his collapse in February of this year. Professor Dunning was born in Plainfield, New Jersey, in 1859. He received the degree of bachelor of arts from Columbia University in 1881; from the same institution the master's degree in 1884 and the doctorate in 1885. The forty years of his academic life were spent in Columbia, where he was successively fellow, lecturer, instructor, adjunct professor and professor. Since 1913 he had occupied the Lieber professorship of history and political philosophy. The degree of doctor of laws was conferred upon him in 1904 and doctor of letters in 1916. His leadership in scholarly work was evidenced by the double honor of the presidency of the American Historical Association in 1913 and of the American Political Science Association in 1922. His presidential address was to have been given at the December meeting of the latter association.

Professor Dunning's work was crowned with unusual success in three fields, as a teacher, as an editor, and as a scholar in the fields of history and government. As a university lecturer, Professor Dunning was a marvel of lucidity and keenness, and left an ineffaceable impression upon the hundreds of students who attended his courses during the long period of his academic career. He was equally notable in his power to interest and encourage students in special fields of inquiry, and in his many encouraging contacts with those who had passed out from the university halls as students. The hundred volumes of the Columbia publications in history, economics and public law are full of acknowledgements of his friendly interest and counsel in the development of scholarly studies. His students published in 1914 *Studies in Southern History and Politics* as a testimonial to his inspiring work in this field, and a volume in the history of recent political theory has been in preparation by another group of his students for a year or more.

He was one of the active group of editors of the *Political Science Quarterly* from 1890 to the time of his death, and managing editor from 1894 to 1903. His discriminating judgment and his editorial care and skill were significant factors in creating and maintaining the high standards of a periodical notable in the field of political science. Ten years of his life were largely occupied with this exacting labor, wearing upon the editor but immensely useful to his collaborators in the field of government.

The contributions of Dr. Dunning to productive scholarship were made in the fields of American history and political theory, and particularly in the latter field. His doctoral dissertation was on *The Constitution of the United States in Civil War and Reconstruction*, (1885). This was followed in later years by his *Essays on the Civil War and Reconstruction*, published in 1898, and *Reconstruction, Political and Economic*, a volume in the American Nation Series. In 1907 with Frederick A. Bancroft he edited *The Reminiscences of Carl Schurz* (1907-17). In 1914 he published a very remarkable survey of Anglo-American relations under the title of *The British Empire and the United States*.

His outstanding contribution to the study of political philosophy was his *History of Political Theories, Ancient and Mediæval* (1902), with the succeeding volumes, *From Luther to Montesquieu*, (1905), and *From Rousseau to Spencer*, (1920). These lucid and scholarly accounts of the development of systematic political thinking quickly superseded the earlier works of Bluntschli and Janet, and became the standard histories of the evolution of political thought, the indispensable guide for

all serious students of formal political philosophy. Perhaps the most striking characteristic of this *opus magnum* was its dispassionate and objective quality, its detached point of view. Few men of equal ability have been able to resist the temptation to formulate an independent system and advance a dogmatic philosophy. In the final chapter of the concluding volume this attitude developed into a form of pessimism, which was not however characteristic of the study as a whole. No one in the last generation has done more than the author of these volumes to advance the study of formal political theory, and to prepare the way for the increasingly intensive study of the evolution of the political mind.

Finally, it may not be amiss to say that Professor Dunning was in the true sense of the term a noble man, as well as a great scholar, and that his personal qualities endeared him to all who came within the bright circle of his acquaintance. He combined in unusual manner great keenness of mind with rare tolerance and breadth of sympathy. Spirited and witty in conversation, he never allowed the scholar to overshadow the man. In his benevolent rôle in his favorite haunt in the Century Club, he became almost an institution.

The departure of Professor Dunning in his sixty-fourth year is a heavy blow to American scholarship. With the death of Lord Bryce, a former president of the Political Science Association, this year marked the passing of two preëminent figures in the field of history and government. While their walks in life were far apart and their types of experience widely different, yet they had in common many intellectual characteristics. In both there was a sympathetic understanding of all types of thought; in both a quality of facile and lucid expression; in both an aversion to dogmatic conclusions. In both there was a strain of weariness and pessimism at the end, but the lives of both radiate inspiration and cheer to those who seek the truth in the troubled maze of political events.

CHARLES E. MERRIAM.

*University of Chicago.*

## BOOK REVIEWS

EDITED BY A. C. HANFORD

*Harvard University*

- International Relations.* By JAMES BRYCE (Viscount Bryce).  
(New York: The Macmillan Company. 1922. Pp. xii., 275.)  
*Near Eastern Affairs and Conditions.* By STEPHEN PANARETOFF.  
(New York: The Macmillan Company. 1922. Pp. 216.)  
*Russia's Foreign Relations During The Last Half Century.* By  
SERGIUS A. KORFF (Baron Korff). (New York: The Macmil-  
lan Company. 1922. Pp. 227.)

The Williams College Institute of Politics was brilliantly inaugurated in the summer of 1921 in a series of lecture courses and "round-table discussions" conducted by men whose high international reputation was based upon wide knowledge and illustrious action. A mark was set which can hardly be surpassed in subsequent years. The authorities of the college have wisely arranged that persons who could not be present might read the lectures in the form in which they were delivered through their publication as promptly as possible in convenient volumes of uniform appearance. At the time when in America a gradual subsidence of the passionate distortions of war-time threatens to be followed by cynical apathy and contemptuous aloofness from the burning problems of an agonized Old World, these thoughtful treatments provide information, stimulation, and a foundation for hope. The three authors here discussed, though from widely separated regions in Europe—an English scholar, traveler, and statesman, a Bulgarian educator and diplomat, and a Russian historian and teacher—are singularly alike in breadth and fairness of mind, freedom from rancor, and conservative liberalism.

Baron Korff explains the relations of Russia with her neighbors from 1878 until 1914, with some reference to events since the latter date. His plan of treatment is geographical, taking up in order the Russian dealings with France, England, China, Japan, Austria-Hungary, the Balkans and Turkey, Germany, and Sweden; the last chapters

summarize the whole and discuss in no approving way the methods and results of secret diplomacy. The treatment is very clear and direct. Little is mentioned that can be considered new, but the point of view gives freshness of interest—the events introduced are discussed as seen by one inside Russia, visualizing and criticising her statesmen and Tsar as actual personalities, and sympathizing with many of her aims and policies. It is evident from the start that the lecturer is strongly opposed to autocracy, bureaucracy, and the falseness and intrigue of much recent European statecraft. He cannot forgive republican France for lending the old Russian government after the defeat by Japan money which was used to repress constitutionalism. Though he believes that loan to have ensured the triumph of the Entente in the Great War, he feels that if it had been conditioned upon increase of Russian popular liberties, Russia might not have been wrecked in the struggle. He does not appear to blame Germany, or indeed any one power, as having primarily caused the war (on this point the three writers are in agreement). He certainly gives too much weight to German influence when he affirms that in the Young Turkish revolution of 1908 “everything was accomplished exclusively through German help and German inspiration” (p. 136); the power of German propaganda in Sweden is also overestimated (p. 170). A few other statements are inexact, as that General Roberts firmly established British rule over Afghanistan (p. 33), that the German landing on the Kwantung peninsula in 1897 was “simply for the purpose of egging Russia on” (p. 63), and that during the conference at Portsmouth, American sympathy swung from the side of Japan to that of Russia (as a result of Count Witte’s capable dealings with the press, p. 88). There is more repetition than seems necessary.

Baron Korff’s solution of the problem of secret diplomacy is to have preliminary conversations secret but in no sense binding, while all binding agreements are to be discussed publicly and ratified by representatives of the people. He acknowledges the difficulty of doing this, pointing out that President Wilson himself attempted to force through the Versailles treaty as a *fait accompli*, already made binding in the process of secret negotiation.

Mr. Panaretoff employs a topical arrangement in his lectures, giving a historical sketch of the Balkan Slavs, describing church organization, literature, education, government, and Turkish reforms, and concluding with a brief discussion of the policies of European powers in the Near East, and a sketch of recent Balkan history. Although his time range

extends over some fifteen centuries, the treatment is sufficiently skilful to avoid all dryness or appearance of merely cataloging facts. The impartiality and strict adherence to truth shown are truly remarkable in a native of the Balkan peninsula. Serbs, Greeks, and Rumanians might honestly look at some of the facts presented from a different angle, but it would be difficult to find among them any writers who would treat Bulgaria as fairly as Mr. Panaretoff treats their countries. In short, his point of view is not Bulgarian or Balkan, but Anglo-Saxon.

The material is much less familiar than most of that presented by Baron Korff, since it deals with remoter times and lands and a wider range of human activities. The descriptions, anecdotes, and quotations are clear, interesting, and apt.

Mr. Panaretoff bears no ill-will even toward the Turk, the oppressor of his ancestors, but gives as much explanation and justification of Turkish policy and action as the facts permit. In fact, the question is presented whether by more disinterested western European influence and action, the emancipation of Greece and the other Balkan states might not have been accomplished with less war and bloodshed, through autonomy proceeding gradually toward freedom (pp. 182, 183).

The last chapter is largely taken up with a presentation of the Bulgarian defense of their actions during the last ten years, showing that the unjust settlement of 1913 was the direct reason for Bulgaria's attitude in the Great War, and pointing out the failure of the treaty of Neuilly to provide, by conforming Balkan boundaries to nationality, a fair basis for permanent peace.

Lord Bryce's lectures here presented are almost the last public work of his extremely long and useful life. The scope of the subject and the number of topics introduced fit it to be the ground-plan for many detailed studies by lesser men. A large number of major questions which go to the foundation of human organization and collective action are here helped toward solution as sketched with summary completeness and excellent proportion by a master's hand. The book shows no dimming of the mental eye or failure of effective literary expression.

First is presented the broad outlines of past inter-tribal and international relations. The criticism may be made that as the result of an education concentrated strongly in the classical age (allusions to which, by the way, are a marked feature of the book), all the time before the Roman unification of the Mediterranean civilization is contemplated



as one indifferentiated period of confused warlike relationships without thought of established peace, whereas in that time also, and extending it cannot be said how far back, there were international relations of peace as well as of war, and problems of close similarity to those of to-day. The second lecture traverses the results in the Old World of the Great War. The treaties of 1919-20 are accounted very imperfect—more so than those of 1814-15. Economics as influencing world politics is then considered; Lord Bryce is no devotee of the "economic interpretation of history;" and he believes, that the less governments have to do with high finance the better.

Causes of war are discussed broadly. Here as in a number of other places, the lecturer falls back into disillusioned, it might almost be said, pessimistic views; he feels that international friendships are founded on almost nothing but self-interest, and are apt to cease when common interest disappears. The lecture on diplomacy aims to condense for the use of younger men the experience of Lord Bryce's own service; diplomacy is stated to be now chiefly useful to inform and advise home governments. As for international law, "Each belligerent will probably disregard in war the engagements it has made in peace, and will use every means of attack physically possible;" nevertheless international law has some value.

Democratic control of foreign policy is dubiously regarded. How can the people obtain knowledge, and how can they act effectively. An increase of popular participation is however possible, and may become very useful. Conferences and congresses, arbitration and conciliation are discussed frankly as methods for settling international controversies. Alliances are held to be dangerous, and the super-state impracticable and undesirable at any time in the near future. The possible remedy is a combination of civilized states for the purpose of preventing war. When examined, Lord Bryce's proposal differs little from the organization of the present League of Nations, which indeed he recommends, subject to revision of the Covenant (pp. 260, 261). He would not guarantee existing boundaries, but provide a machinery for revising them where objectionable.

Lord Bryce agrees with Mr. Panaretoff that the Balkan settlement of 1919 is unjust to Bulgaria and leaves the situation unimproved. He is not as tolerant toward Turkey as Mr. Panaretoff, being evidently still very much filled with horror at the Turkish treatment of the Armenians. He is unreconciled to the continual presence of the Turkish government in Europe and to the possible failure in establishing an

independent Armenian state. He inclines to the view that Russia will probably work out of her present deplorable situation gradually, and not through further destruction and bloodshed. The blackest cloud of all in threats to European peace he sees to hang above the Rhine.

Two or three inaccuracies may be noted. The German devastation in northern France during the retreat of 1918 cannot rightly be counted the outstanding cause of continued French resentment (p. 44); perhaps the devastation of the spring of 1917 is intended. It is not the case that Adrianople was left to the Turks by the Treaty of Sèvres (p. 67). The text seems to affirm that the American Constitution was adopted as primarily a commercial union (p. 85). It is commonly held that the "Concert of Europe" in regard to Near Eastern affairs began after 1815, and was not created by the Congress of Berlin (p. 208).

All three volumes are provided with indices. Baron Korff's has a short table of contents, and Lord Bryce's one that is analyzed. The editing is careful. A few awkward constructions have been overlooked in the books by non-English writers. Baron Korff gives some bibliographical lists without specific references.

ALBERT HOWE LYBYER.

*University of Illinois.*

*The Washington Conference.* By RAYMOND L. BUELL. (New York: D. Appleton and Company. 1922. Pp. xiii, 461.)

The Washington conference is presented from the viewpoint of the international situation in the Far East, with a militaristic Japan as the central figure. The first third of the book deals with "the forces in the background"—Japanese encroachments upon China and Siberia, the Japanese Monroe Doctrine, and the Anglo-Japanese Alliance. An appendix contains the conference treaties and agreements.

The volume is well written, a wide range of excellent source material has been used, especially of recent foreign newspapers, and the footnotes are extensive. On the other hand, too sweeping, and occasionally quite unjustified, statements are sometimes made, such as: "the American Delegation . . . misrepresented the actual achievements of the Conference to the American public" (p. 325); "the almost complete ignorance of the Siberian Question" on the part of the conference and the American delegation (p. 314); and "the policy of the American Delegation. . . (in regard to the Far East) was uniformly 'pro-Japanese'" (p. 322).

As to the results of the conference, "it failed almost entirely" in everything relating to the Far East (p. 325). Imperialist Japan, it is contended, was in control of the Orient when the conference opened; the Naval treaty, by its prohibition of further fortifications or naval bases on certain Pacific islands, made it impossible for the United States alone to interfere with Japan; while the Four Power Treaty prevented joint action by Great Britain and the United States (pp. 313-314); with the result that the conference actually "strengthened the position of Japan" (p. 327). This failure of the conference is the thesis of the main part of the volume. To establish this contention, reliance is placed upon an unusual interpretation of the Four Power Treaty, which, it is said, "constituted a pledge that Great Britain and the United States would not jointly interfere in the Orient" (p. 177). The admission is made that the American delegation may not have "realized the exact import" of the treaty and that the meaning contended for was not brought out by the microscopic examination made by the Senate (p. 182, footnote).

Had the author given a more objective discussion of the results of the conference, presenting the differing viewpoints, his book might well have been the standard work upon the conference as a diplomatic world event. As it is, it must be placed in the class of controversial publications. It is of genuine value, however, for its collection of widely scattered material, and its clear, discriminating picture of the far eastern background of the conference, and the international situation; and interesting for the reasoning by which the author makes a failure, in large part, of the conference which majority opinion regards as one of the most striking of American successes.

G. H. BLAKESLEE.

*Clark University.*

*The New German Constitution.* By RENÉ BRUNET. Translated from the French by Joseph Gollomb. Foreword by Charles A. Beard. (New York: Alfred A. Knopf. 1922. Pp. xiv, 339.)

Dr. Charles A. Beard, in an interesting preface, declares this volume to be "the best treatise on the German constitution which exists in any language." This may well be true though the reviewer has not yet seen the recent works by Anschütz and Meissner, but it does not seem to be such high praise as the book deserves. The early commentaries

on the German constitution by such writers as Stier-Somlo, whom Dr. Beard mentions, Giese, and Purlitz, were scarcely more than reprints of the text with notes on the politics of the Revolution and references to the debates in the constitutional convention. They gave little or no consideration to such topics as the real character of the parliamentary system which the new constitution sets up, the nature of the responsibility of the ministers, or the extent of the discretionary authority of the president. They threw little light on the actual process of legislation or of administration that might be expected under the new government. It was not possible for them to throw much light on such matters as the place of the supreme judicial court or of the economic councils in the new scheme, for the working of those institutions will depend upon the laws by which the provisions of the constitution are carried into effect. Indeed a striking feature of the new constitution is the large number of subjects with reference to which the constitutional provisions are incomplete and must be supplemented by further legislation. No adequate treatise was possible when the earlier commentaries were written. And so it would seem higher praise to say that M. Brunet's book, having regard for the circumstances under which it was written, is a thoroughly good book.

It contains much that American students of government wish to know and suggests many topics for further study. It properly treats the constitution of August 11, 1919, and the supplementary legislation as a single body of constitutional laws. It interprets the provisions dealing with the frame of government in the light of the experience under the Bauer and Muller cabinets, and never permits the reader to forget that it is a government, and not a document, that he is examining. It summarizes the reasons for the adoption of sundry variations upon the parliamentary form of government, as developed upon the continent of Europe prior to the German revolution, which distinguish the new constitution. It makes clear the fact that, like all practical constitutions, this is the creature of contention and strife and bears upon its face the birthmarks of inconsistency and compromise. These are especially conspicuous in the second part, which deals with the fundamental rights and duties of the German people. As Dr. Beard ingeniously suggests, if one should underscore the socialist sections with red, the Center clauses with yellow, and the capitalist phrases with black, one would have an interesting study in constitutional artistry.

But much remains to be done before the new German constitution can be properly understood. What, for example, will be the power

of the supreme judicial court with respect to unconstitutional legislation? The statement has been made that no power to declare laws unconstitutional has been granted to the judiciary. This statement may be true, so far as the constitution of August 11, 1919 is concerned, if restricted to laws passed by the National Assembly. State legislation however, if found by the national judiciary to be in conflict with the national constitution, may certainly be declared unconstitutional. And perhaps national legislation also. The answer depends upon the construction to be given to the second part of the constitution. Are the rights and duties of Germans, there solemnly set forth, to be regarded merely as so much good advice, which the National Assembly may accept or reject as it thinks fit? Or may the supreme judicial court, when created, and meanwhile the constitutional senate, protect the citizen in the enjoyment of his constitutional rights? Certainly some of these rights, such as that of the independent agricultural, industrial, and commercial middle classes to protection against oppression and exploitation (Art. 164) are hardly susceptible of enforcement in the courts of law. In other cases the event is not so clear. M. Brunet rightly makes no attempt to answer such questions.

A. N. HOLCOMBE.

*Harvard University.*

*The American Party System.* By CHARLES EDWARD MERRIAM.

(New York: The Macmillan Company. 1922. Pp. x, 439.)

*The Economic Basis of Politics.* By CHARLES A. BEARD. (New

York: Alfred A. Knopf. 1922. Pp. 99.)

In the first of these books Professor Merriam, the author of *American Political Theories* and *American Political Ideas* writes of American political practice. He presents an analysis of our party system, dealing, as he says in his preface, "with the structure, processes and significance of the political party." Professor Merriam is not only a "politician of the chair," having a good knowledge of our political history and being a close observer and student of current party conduct; but he has also had practical experience in party contests and processes in the second largest city in America. He knows his subject at first hand, having learned it by the laboratory process. His studies and experiences especially qualify him to present this study on American political parties.

In the early chapters of the volume the author deals with the composition, leadership and organization of parties, showing their connection with party policies, principles, traditions, habits and antecedents. He shows the relation to party strength and conduct of certain classes, races, sections and creeds; he points out the qualities of certain personalities and "magnetic" leadership, and the influence of the professional group of politicians for concerted action. He shows the numerous and varied factors that determine party membership and allegiance. The cohesive force of the professional group "tends to master the party rather than serve it," but it is checked by an insurgent faction or the fear of party revolution.

Four chapters are given to the influence of the spoils system on our party life. The author discusses this system in a broad way in its relation to our legislative, administrative and judicial life; in its relation to contracts, taxation and public funds and to the "underworld" with its power to levy tribute on vice and crime in return for immunity from the law. Very interesting chapters are given to the causes of the spoils system and to the boss, the outcome of the system; in these chapters are discussed the qualities and causes of the boss; his methods; his knowledge of popular psychology; his relations to organized labor, to "big business," to political reform; the sources of the boss' power; the social conditions that produce him and the various types of the boss that have appeared in American politics.

There is a brief sketch of our historical American parties, with a fair judgment of their merits and services. The summary is brought down to 1920, a campaign year which, as Professor Merriam very truly says, decided no specific issue but which presented a singular complex of racial and class and personal factors which had equal right to the credit and fruits of victory.

The campaigns of one hundred and thirty years are briefly analyzed and it is shown that out of thirty-two historic contests in only sixteen were clear-cut political issues presented to the voters while sixteen other contests were settled on traditional and personal grounds.

Minor parties are properly appreciated, and it is shown that some third parties have been the forces that have developed issues and have greatly modified and determined the history of parties; while other minor parties, like the Anti-Masons, and the Know Nothings, have merely raised suggestions that have "passed into the limbo of forgotten things."

Party nominating systems and the relation of parties to elections, the party primary with evidence for and against its existence, party

slogans, methods of campaigning, party rallies, barbecues and demonstrations, ways of winning votes and influencing opinion, nicknames and terms of derision, state factions, kickers and bolters, financing the party and legal regulation of campaign funds,—these and many other party topics are considered in due place and form. The volume has a chapter on the theories of the party system and closes with one on the nature and function of the party. There is thoughtful observation here, together with political philosophy, party history, and practical politics.

On the whole, Professor Merriam's volume contains an excellent summary of the elementary facts of the American party system. Its index does not cite all the topics of which its pages treat, such as the anti-saloon league, the league of women voters, the farm federation, etc. The volume is compact with information, not "as lively as fiction," but interesting and valuable to the inquiring student and the alert citizen. It would be hard to think of an essential feature of our politics and parties on which information may not be found in this volume, all of it put forward in logical order and clarity of expression.

The author of the second of these books, Professor Charles A. Beard, writes for the open minded. He is a pioneer, not a routineer, in his historical and political writing. He may be somewhat disturbing to conservative superstition but in that he renders a distinct service. His little book *The Economic Basis of Politics* consists of four lectures given at Amherst College in 1916 on the Clark Foundation. The essayist first deals with the doctrines of political philosophers, including chiefly Aristotle, Locke and the American statesmen Madison, Calhoun and Webster, whose writings are used to show that the underlying forces in politics are based on property and the struggle of classes for the possession of property.

In the second lecture on "Economic Groups," Professor Beard further fortifies his thesis that there is an intimate relation between property and political opinion and conduct. Men's political conduct and group associations are determined by what they have or fail to have, or by what they want of material things, not by abstract thinking or convictions in men's hearts and minds about tyranny, liberty and the rights of men.

The essay on the "Doctrine of Political Equality" introduces the conflict with this basic theory of politics, wherein the rule of the people is seen to be struggling with the rule of the estates. In his final essay on the "Contradiction and the Outcome" the author finds that in the

field of politics the struggle that is going on for relief or control, is between conflicting interests,—a landed interest, a transport interest, a railway interest, a labor interest, a shipping interest, etc., and the solution is still with the Sphinx.

Those who are students of history, like Professor Beard, and those who know his historical contributions on the economic history of the Constitution and of Jeffersonian democracy, will not quarrel with his contention that our political doctrines are often in conflict with the actual facts in our political life, and that it is only a delusion and a snare to think that politics deals merely with abstract men divorced from economic interest and group sentiment. These virile essays will interest all students of politics and history.

JAMES A. WOODBURN.

*Indiana University.*

*The Supreme Court in United States History.* By CHARLES WARREN. Three volumes. (Boston: Little, Brown and Company. 1922. Pp. xvi, 540; x, 551; x, 532.)

These volumes are useful, enlightening, absorbing. They trace the relation between the Supreme Court and the history of the United States. They do this in several ways. They tell who have been suggested for judgeships. They give the peculiarities, partisan views, and judicial record of the appointees. They state the essential facts and surrounding circumstances and ultimate decisions of the most important cases. They present the comments of newspapers and of politicians. They do all this in an approximately chronological order; but now and then they turn aside to point out by way of generalization the apparent trend of decisions and their relation to political and economic phenomena.

The author deserves praise for originality, thoroughness of investigation, fairness of spirit, and clearness of expression. His book is the result of vast research. The foot-notes teem with citations. Hundreds of these deal with easily accessible material, such as law reports, well-known magazines, and biographies; and other hundreds deal with old newspapers, manuscripts, and other sources which could not have been found without unusual labor.

The quotations are chiefly restricted to the comparatively inaccessible material; and as they are inserted for the purpose of proving the prevalence of opinions, or at least the expression of them by an



appreciable number of newspapers or politicians, they very properly abound in cumulative repetitions.

One of the results of reading these volumes carefully and especially the quotations—must be grave disrespect for the expressions in which newspapers and politicians have indulged and still indulge; for the repetitions create a suspicion that there is little individual thinking, and the frequent reversal of expression in accordance with changed partisan needs enlarges the suspicion into a conviction. If any reader has had enthusiasm for any past or present political party, these volumes hold for him a sad enlightenment. Yet that enlightenment will create no disrespect for the members of the Supreme Court of the United States. On the contrary, it will create great respect for them. Study of the decisions shows that when the court cannot agree, the disagreement of the judges does not, as in the instance of newspapers and politicians, habitually follow a partisan line.

As the author has been writing as a philosophical historian, he has been compelled to have in mind a theory wherewith to test the growth of facts. He has had indeed two theories, one that the judges of the national court inevitably tend to emphasize the national power rather than the state power, and the other that a great feature in the history of the Supreme Court has been the emergence from generation to generation of new groups of problems. The two theories are consistent, and they are amply upheld by the facts. That federal judges, irrespective of party, recognize the nationalistic intent of the Constitution, and simultaneously attempt to respect the functions of the states, has been shown for more than a century, to the confusion of such dreamers as lazily divide judges into loose-constructionists and strict-constructionists. That each generation has had its own new group of problems is equally true. With approximate accuracy it can be said that in the first third of the nineteenth century the Supreme Court had two tasks—one the task of demonstrating that according to the constitutional limitations cautiously created by the people of the United States the judges have the duty to protect the individual against the use of unbridled power by the executive and legislative departments, and the other the task of insisting that, though nation and state co-exist and must exercise their respective functions, nevertheless within the terms of the Constitution the nation is paramount. Further, in the second third of the nineteenth century the task was to prevent the Constitution from clogging, by the contract clause or otherwise, the development accompanying the rise of railways and of factories. Finally, in the last third of the nineteenth

century the tasks—not yet carried to completion—were to ascertain the respective limits of the states and the nation under the Fourteenth Amendment and the commerce clause.

The period covered is 1789–1918; but the author explains that the detailed discussion ends with 1888 and that for the subsequent thirty years, well remembered by many of his readers, he has given only a broad outline.

As the author addresses his book to all persons, whether lawyers or laymen, who are interested in history or in government, it is obvious that he has been compelled to lay emphasis upon constitutional problems and to omit most of the decisions, however important, which deal exclusively with the lawyer's work in contracts, torts, criminal law, and the like. It is obvious too that he has been under the temptation to humor the layman's habit of over-emphasizing the Chief Justice as distinguished from the associate justices. Yet he has not gone to excess in these directions. He knows well that the greater part of the court's work deals with questions not distinctly governmental; and, as he appreciates the importance of the non-governmental cases, he has been quick to perceive the instances where, as in *Swift v. Tyson*, such cases have actual bearing on the relative spheres of state and nation (II, 362–365). Similarly, he knows the standing of associate justices, and he does proper honor to them, although he carefully and properly refrains from narrating that in the greater part of the period from 1789 to 1918 the members of the Supreme Court bar would not have called the Chief Justice the ablest member of the court—especially as regards non-governmental topics. Indeed, the great lesson of these painstaking volumes is that all members of the court have conscientiously and skilfully coöperated and that for this reason, notwithstanding personal shortcomings and occasional erroneous decisions, this complicated piece of human machinery has accomplished successfully the unprecedented duty of building upon the basis of a brief document a system of political doctrine covering manifold relations of the individual and the state and the nation.

EUGENE WAMBAUGH.

*Harvard Law School.*

*The Life of John Marshall.* By ALBERT J. BEVERIDGE. Four volumes. (Boston and New York: Houghton Mifflin Company. 1916-1919. Pp. xxvi, 506; xviii, 594; xxii, 644; xviii, 668.)  
*Life of Roger Brooke Taney.* By BERNARD C. STEINER. (Baltimore: Williams and Wilkins Company. 1922. Pp. 553.)

Although the dictum that the history of the world is written in the lives of its great men may not command universal assent, there will be little dissent from the statement that the history of the Supreme Court of the United States is to a large extent embodied in the lives of its chief justices, especially during the period before the Civil War. Both Marshall and Taney have had other biographers, but the two substantial works under review constitute by far their most thorough and notable biographies.

Although the authors of these volumes undoubtedly have a keen appreciation of the great merits and accomplishments of their respective subjects, neither biography has any resemblance to an uncritical panegyric. Marshall's shortcomings—his slovenliness of dress and undignified demeanor while off the bench and his lack of legal erudition—are recognized. Marshall could be stern when the occasion demanded, but his customary geniality and affability won him friends everywhere and in all walks of life. It was somewhat paradoxical that the great Chief Justice, who was preëminently conservative in his political beliefs, should have been so democratic in his personal associations. It is recorded that his only personal enemies were Jefferson and Spencer Roane, judge of the Virginia court of appeals, whom Jefferson would probably have appointed in Marshall's place, had it become vacant.

The publishers' words of extravagant laudation require much less qualification in the case of Beveridge's work than they usually do. His elaborate and painstaking account makes Marshall stand out as a man of flesh and blood. The work is not a treatise on constitutional law as found in Marshall's opinions, and mere legal discussions are avoided. But the work supplies the historical setting and the political background which make his opinions on great constitutional questions much more vivid and intelligible to the general reader. Especially thorough and detailed are the accounts of the circumstances surrounding the decisions in *Marbury v. Madison* and the Dartmouth College case. The author gives Marshall credit for raising the court from a position of slight public regard to one of great dignity, authority, and influence.

His dominating position in the court is attributed to his ability to imbue others with his own ideas, unconsciously to themselves. It is pointed out that he introduced the custom of announcing, himself, the views of the court instead of the delivery of opinions by the justices *seriatim* (III, 16). His great influence in upholding the integrity of the federal courts against the attacks of the Jeffersonians and in moulding the development of our constitutional law in accordance with his ideas of nationalism is fully described. The only criticism of Beveridge's work which the writer would make is that his lack of sympathy with the party of Jefferson is very ill concealed, and the latter's public services do not seem to be fully appreciated. To Beveridge, Jefferson is merely an astute politician, in contrast with Marshall, the jurist and statesman. A truer estimate is that made by Professor Corwin, who, in his *John Marshall and the Constitution*, points out that each of these men was necessary in order to correct the bias of the other, and that "Jefferson's emphasis on the right of the contemporary majority to shape its own institutions prevented Marshall's constitutionalism from developing a privileged aristocracy" (p. 55).

In contrast with Marshall, Taney, as Steiner shows, abandoned the practice of making the Chief Justice the organ of the court in delivering opinions, because, upon constitutional questions, the court lacked cohesion (p. 191). Steiner takes up Taney's constitutional opinions chronologically and gives a running comment on the cases. He sometimes gives first a summary of the criticisms of contemporaries and later the facts and circumstances of the case. Clearness would probably be improved by a reversal of this order of treatment. Steiner does not hesitate to criticise some of Taney's opinions, as, for example, that in the *Wheeling Bridge* case and especially in the *Dred Scott* case. The treatment of the latter case is very full but does not give one the impression of being altogether dispassionate. Its value, however, is not thereby appreciably impaired. As the author points out, although the advent of Taney marked a transition to a stricter construction of the Constitution, he was not always on the side of state rights, as was illustrated in the case of *Holmes v. Jennison* (p. 213).

Both of the biographies under review display wide investigation and thorough scholarship and their authors have performed a great service for students of American constitutional law and history.

JOHN M. MATHEWS.

*University of Illinois.*

*The Nature of the Judicial Process.* By BENJAMIN N. CARDOZO.  
(New Haven: Yale University Press. 1921. Pp. 180.)

Seldom in a similar space will a student of legal institutions find so much of interest as in these lectures of Judge Cardozo. With a wealth of knowledge and a felicity of practical illustration the author outlines the influences which actually mould the judgments of appellate courts. He draws aside the veil of judicial sanctity, and shows that judges have their views determined by all the influences which control their judgment as men and as lawyers. The author's point of view is illustrated by the following quotation: "Deep below consciousness are other forces, the likes and the dislikes, the predilections and the prejudices, the complex of instincts and emotions and habits and convictions, which make the man, whether he be litigant or judge. . . . There has been a certain lack of candor in much of the discussion of the theme, or rather perhaps in a refusal to discuss it, as if judges must lose respect and confidence by the reminder that they are subject to human limitations. I do not doubt the grandeur of the conception which lifts them into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights; and we shall not help the cause of truth by acting and speaking as if they do. The great tides and currents which engulf the rest of men, do not turn aside in their course, and pass the judges by" (pp. 167-168).

Judge Cardozo limits his discussion almost entirely to the relatively small number of cases "where a decision one way or the other, will count for the future, will advance or retard, sometimes much, sometimes little, the development of the law. These are the cases where the creative element in the judicial process finds its opportunity and power" (p. 165). The number of these cases is actually not small, when we include within it (as we must) the body of cases dealing with questions of constitutional and statutory construction; and these cases have an importance out of proportion to their number.

Judge Cardozo's attitude toward the various forces influencing judicial action is illustrated by the following quotation, "My analysis of the judicial process comes then to this, and little more: logic, and history, and custom, and utility, and the accepted standards of right conduct, are the forces which singly or in combination shape the progress of the law. Which of these forces shall dominate in any case,

must depend largely upon the comparative importance or value of the social interests that will be thereby promoted or impaired" (p. 112). Judge Cardozo properly assumes that in appellate courts the eccentricities of individual judges are not so important, but tend to balance each other in the long run.

It is impossible in a brief review to do more than call attention to the excellence of this little book. Those who do not read it will miss a stimulating contribution to the discussion of our legal institutions.

W. F. DODD.

Chicago.

*The Modern Idea of the State.* By H. KRABBE. Translation and introduction by George H. Sabine and Walter J. Shepard. (New York: D. Appleton and Company. 1922. Pp. lxxxi, 281.)

In 1906, Professor Krabbe of the University of Leyden wrote *Die Lehre der Rechtssouveränität* and in 1915 and 1917 further elaborations of this earlier volume which are now put forth under the title of *The Modern Idea of the State*. The translation is the work of Professors George H. Sabine and Walter J. Shepard, who have also written an elaborate introduction to the volume.

Professor Krabbe's work was reviewed in an earlier number of this journal and therefore will not be discussed in great detail on this occasion. Krabbe's study is a protest against the absolutist theory of sovereignty, and a constructive attempt paralleling those of Preuss and Duguit to provide a substitute theory. The substance of his doctrine is that the basis of the modern state must be sought in the sense of right (*Rechtsgefühl*). The process of modern political development is essentially the substitution of a spiritual power for personal authority. The spiritual nature is the source from which spring real forces and "these forces rule in the strictest sense of the term. . . . There is only one source of law—the feeling or sense of right which resides in a man and has a place in his conscious life." Both state and law are the creatures of this "*Rechtsgefühl*" which may be regarded as the adequate substitute for sovereignty and the ultimate basis of political obligation.

The translation is happily done and its makers deserve special praise for avoiding the atrocities often unwittingly committed by linguists who are innocent of the vocabulary or concepts of jurisprudence, politics and philosophy. The industrious translators have somewhat

less happily prefixed an extended introduction to Professor Krabbe's work. In the main this is a running interpretation of the author's work, but it is difficult at times to know whether the preface is intended as a free interpretation of Krabbe or as the independent views of Sabin and Shepard. It is an admirable preface but altogether out of proportion to the length of the body of the book and would have been better placed as an independent treatise. Students of political theory will hope that Professors Shepard and Sabine, jointly or severally, may in the near future develop their interesting views on political theory much more fully on the basis of the hopeful beginning here made.

CHARLES E. MERRIAM.

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*Johan Sverdrup.* AV HALVDAN KOHT. Vol. I. (Christiana: H. Aschehoug and Company. Pp. viii, 522.)

The history of the development of responsible government in Norway centers around the life and work of Johan Sverdrup. When the Norwegian peasants, stimulated by the revolutionary movements of 1830, attempted to seize control of the government by electing members of their own class to the Storting they often found their majority rendered powerless by a cabinet responsible to the king alone. Several of their leaders, notably C. G. Ueland, realized that herein lay the crux of the situation, but they were unable to secure a change. Sverdrup became the organizer of the victory for democratic principles. Imbued with the liberal ideas of the forties he strove for a government "for and by the people." He considered the task too big for the efforts of one class; rather it required the marshalling of the liberal sentiment of the entire nation.

The present volume covers about twenty years of Sverdrup's parliamentary career (1850-1869). Professor Koht relates the story both of the statesman's early life and of his pioneer work in creating a strong liberal party. It is a history of Norwegian politics during eventful years which reveals the struggle for political democracy in the far north as a part of the great movements which then swept Europe.

Short of stature, with black hair and a swarthy complexion, in speech rapid, fiery and emotional, Sverdrup seems un-Norwegian in everything except his love of liberty. The family was indeed of foreign origin; but for more than two centuries it had been closely identified with various progressive movements in Norway, and an uncle, Professor

Georg Sverdrup, won the gratitude of the nation by his services in 1814. Johan Sverdrup was also deeply influenced by the great poet of Norwegian liberty, Henrik Wergeland. Strongly nationalistic, he took no interest in the agitation for a union of the three northern kingdoms and opposed the pro-Danish policy of Charles XV during the crisis of 1862-1864.

Professor Koht is a careful, scientific historian, and he has succeeded in keeping the various threads of his story well in hand. The style is clear and in places vigorous, but it fails to convey the impression of finish and elegance produced by writers of an older school.

PAUL KNAPLUND.

*University of Wisconsin.*

*Railroads and Government.* By FRANK HAIGH DIXON. (New York: Charles Scribner's Sons. 1922. Pp. xvi, 384.)

No one can leave Professor Dixon's book without feeling that the war hastened, rather than caused, the important changes in administrative policy and organization made by the Transportation Act of 1920. The emphasis upon revenue needs, and the relationship of revenue to credit conditions, which furnish the principles of the rule of rate making, appeared in the 1910 advance rate cases, and again in the rate level cases of 1914, 1915, and 1917. Dissatisfaction with the administration of the long and short haul clause led to a clear statement, in the act, of principles the commission had haltingly pronounced. The breakdown of the Newlands Act, clearly apparent when passage of the Adamson Law was forced, indicated the need for new machinery for the adjustment of labor disputes. Demonstration of the existence of problems of this character is the task of the first section of the book—"Federal Regulation, 1910-1916."

The war period (section two) is largely treated as an episode apart. During the war the continuous movement of men and materials to the seaboard was the problem faced by the transportation machinery. Federal control Professor Dixon justifies by a demonstration of the inadequacies of the competitive system. The subsequent organization, the steps taken to secure unification and economies, the labor policy—these elements of the broad problem he presents with some elaboration and much sympathy. The railroad administration, however, has lacked a charitable treatment of its activities, and such protest as may be made on that score should be registered against utilizing the



director general's statement as a summary of the achievements of his organization.

In the third section of the book, "The Return to Private Operation," is given a study of the first year's workings of the regulatory system created by the Transportation Act. In this section are discussed rate regulation (including such matters as the rule of rate making, the suspension power, the amended long and short haul clause, the power to fix minimum rates); service regulation (car service and terminals); and the regulation of management. Under this last heading may be included the regulation of wages and working conditions, as provided for by the creation of the labor board; the regulation of securities; the consolidation of railroads; the power to fix depreciation rates; and the "recapture" of excess earnings.

The book was written as a narrative, and as a narrative it should be judged. This form of treatment has obvious limitations. If Professor Dixon had not told us that he had written "with teachers primarily in mind," the subordination of stiff reasoning to narrative interest could be forgiven the more easily.

HOMER B. VANDERBLUE.

*Northwestern University.*

*Government and Industry.* By DELISLE BURNS. (New York: Oxford University Press. 1921. Pp. 315.)

As a result of studying actual happenings with open eyes and open mind, Mr. Burns has written an extraordinarily suggestive book, packed with heretical truths. He drops the old idea of "interference" on the scrapheap, and with a wealth of illustration, drawn chiefly from British experience, develops this thesis: A new conception of the organized economic community is becoming operative, a community that is neither the state alone, nor the non-governmental organization of industry, but a unique complex of the two. The state enlarges its direct economic activities, and at the same time develops a series of administrative offices, non-political in function, that concern themselves either with organizing the relations between the parties who produce and distribute goods or with organizing the material and financial conditions of industry.

The state thus becomes an integral part of the economic system, and brings over into that sphere the conceptions (1) of a community with common goods and (2) of public service. "Government in its

economic functions is changing the bases of habit and belief upon which rest the operation of the 'natural' laws of pure economics." In each particular situation the state and industrial organization are accordingly on trial to determine their relative serviceability, and the new economic community tends more and more to be dominated by the idea of use, not profits.

Mr. Burns recognizes that government represents economic groups, but he refuses to make that fact the whole of political science. He does not see the existing political structure as in process of being destroyed and replaced by a new industrial government, but regards the present state as being fitted into a scheme which views and organizes industry as the public service of the economic community. He offers cold comfort to either the idealizer or the absolutist, whether in politics or in economics, but he gives to the honest student a body of facts and ideas to ponder on that will mean in most cases a remarkable enrichment of intellectual furniture. Why must we usually go to England for such work?

H. R. MUSSEY.

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#### BRIEFER NOTICES

James Mickel Williams is the author of *Principles of Social Psychology* (pp. xii, 459) published by Alfred A. Knopf. He deals with social phenomena from the standpoint of the conflict of interests which shows itself in economic, political, professional, family, cultural and educational relations. Students of political science will be most interested in his chapters on "Political Rivalry of Economic Interests," "The Rivalry of Party Organizations," "The Conflict of Attitude among Political Leaders," and "Suppressed Impulses and Their Reactions in Political Relations." In this latter chapter he points out the dangers that arise from undue political repression and concludes that, "The democratic state must . . . provide for that free expression of opinion, and that quick adjustment by governmental action that insures a minimum of unrest due to politically suppressed impulses. To reduce suppression to a minimum and thus facilitate the development of personality is precisely the essential reason for political freedom" (p. 417).

In *Des Sciences Physiques aux Sciences Morales*, by Jacques Rueff (Paris: Librairie Felix Alcan, pp. 202), the author has undertaken to

demonstrate that there is the same scientific application of mathematical laws and reasoning to the moral as to the physical sciences, and advances a mathematical theory of economics, with some discussion of what is called Euclidean and non-euclidean morals and economics.

*The Political Institutions and Theories of the Hindus*, by Benoy Kumar Sarkar (Leipzig: Markert & Petters; pp. 242), deals with the constitutions and political philosophy of ancient India, covering a field unknown to most Americans. Parts of the work have been presented as lectures in several American and European universities, and published in various journals, including two articles in this REVIEW.

*The Principles of Revolution*, by C. Delisle Burns (Oxford University Press, pp. 155), is a discussion of revolution not as an act of violence but as the peaceful introduction of a new order; it is an analysis and exposition of certain ideals and influences which, in the opinion of the author, work not towards destruction but towards important changes in society. There are chapters on such topics as "Rousseau and the New Social Order," "Karl Marx and Revolution," "Mazzini and the New Nationalism," "William Morris and Industry," "What is Revolution?" and "For and Against Revolution." Those who have read Mr. Burns' other books, such as *Political Ideals* and *Government and Industry*, will find the same keenness of analysis and depth of thought in this book.

*Political Ideas of the American Revolution*, by Randolph Greenfield Adams, Durham, N. C. (Trinity College Press, pp. 207), is not concerned with the ordinary political philosophy of the Revolution such as natural rights, the social compact and the like but is rather a study of the Britannic-American contributions to the problem of imperial organization during the years 1765 to 1775. The author finds in the writings and speeches of leading thinkers of that period the idea of imperial federation which is at the basis of the present-day British Commonwealth, and concludes that the question of American independence might never have arisen but for Britain's insistence that it was impossible to distribute authority and at the same time retain sovereignty.

*George Bryan and the Constitution of Pennsylvania, 1731-1791*, by Burton Alva Konkle (William J. Cambell, pp. 381), is a comprehensive and scholarly account of the part played by one of the most important

political leaders of Pennsylvania during the Revolutionary and early state periods. The author explains how Bryan was largely responsible for the Pennsylvania constitution of 1776, with its unique provisions for a single-chambered legislature and council of censors, and his defense of this constitution for the next fifteen years against the attacks of those who wished to establish a more complete separation of powers. He also shows how Bryan was the author or co-author of most of the vital laws and precedents adopted by the executive, legislative and judicial branches of the state, through his services as vice-president of the supreme executive council, member of the legislature and judge of the two highest law courts; and how he secured the adoption of the Pennsylvania law for the abolition of slavery in 1780.

*A History of the Constitution of Minnesota*, by William Anderson and Albert J. Lobb, has been published by the University of Minnesota (Studies in the Social Sciences, no. 15; pp. 323). This is the first of a series of monographs planned by the bureau of research in government; and gives a comprehensive and intensive study of the early history of the territory and state, the convention and constitution of 1857, and the later amendments, with a series of documents as appendices.

*The Pardoning Power in the American States*, by Christen Jensen (The University of Chicago Press, pp. vii, 143), is an exhaustive analysis and criticism of one of the functions of the American state executive which has hitherto received comparatively little attention from political scientists. After tracing the history of the pardoning power in the colonies and the organization and methods of state pardoning authorities in general, the author devotes a chapter to a more detailed discussion of the power of pardon in some half dozen of the western states. There is also a carefully written chapter on the legal aspects of the pardoning power with citation of numerous cases. As a result of his investigation the author concludes that throughout the American states in general there has not been evolved a systematic method to be used as a basis for granting or refusing clemency, and secondly that "governors are not specially fitted to be the final arbiters of clemency as they are in many states." For the first defect he recommends the standardization of pardon procedure under which a stable policy would be developed in each jurisdiction, while for the latter defect he would give the final power to a full-time board rather than to the chief executive.

In *The Constitution of the United States: Its Sources and Application* (Little, Brown & Co., pp. xix, 298), Thomas J. Norton has taken up the federal Constitution clause by clause explaining the meaning of each clause, the historical circumstances out of which it arose and its application to actual cases. The result is a non-technical and readable account of the Constitution, not as a dry-as-dust document but as a living force. It should be especially useful to the average citizen, to new voters and to students desiring an elementary knowledge of American constitutional government. In a few instances somewhat misleading impressions are left such as the explanation that the Twelfth Amendment was adopted because the original provision in regard to the election of the President and Vice President gave rise to conflict of opinion and consequent want of harmony within the administration (pp. 105-106), and the idea that the prerogative of the House in regard to money bills is of great importance (pp. 34-37). There is a useful table of the leading constitutional cases with a brief note as to the significance of each and two large charts, one showing our governmental history prior to the adoption of the Constitution and the other the present form of national and state government.

*The Building of an Army*, by John Dickinson (The Century Co., pp. 398), describes in a comprehensive manner and with scholarly perspective the processes by which the United States, with a regular force of only 100,000 on April 1, 1917, placed more than 3,000,000 men under arms in about a year and a half; and also contains a chapter on the Army Act of 1920 and a discussion of the essentials of American army policy. The material presented is based largely upon a study of the statutes, official reports, general orders of the war department, and records of hearings before congressional committees, and is a discussion of the political as distinguished from the technical military aspects of army building. Mr. Dickinson is of the opinion that the hope of our future preparedness and policy of military legislation lies in the strengthening of voluntary organizations like the state militia, summer training camps and military schools, and the devising of better ways whereby the technical skill in the regular army may touch and influence these voluntary organizations.

*Shall it be Again?* by John Kenneth Turner (B. W. Huebsch, pp. 448), is an attempt to prove that we entered the World War "in the interest and at the direction of high finance, and at all stages to the

prejudices of the general welfare." It is not only an impeachment of American motives for going to war but is also an attack upon the policies and activities of President Wilson, a defense of Germany and a criticism of the treaty of Versailles.

The story of the American Red Cross work in Belgium during the years 1917-19 is told in a terse and interesting fashion by John van Schaick Jr. in a book entitled *The Little Corner Never Conquered* (Macmillan Co., pp. 282). The writer was for almost two years the Red Cross Commissioner to Belgium and his account is therefore authoritative as well as interesting.

*The Myth of a Guilty Nation*, by Albert J. Nock (B. W. Huebsch, pp. 114), is a challenge to the basic assumption of the Versailles treaty that Germany was entirely guilty of starting the war. A good many persons may agree with Mr. Nock in regard to the terms of the treaty but very few will be convinced by his opinion that the economic, diplomatic, and military activities of the Allies preceding 1914 were the causes of the war. The author believes that the causes underlying the present unsettled state of affairs in the United States and Europe are inherent in the terms of the treaty and "the only thing that can better our own situation is the resumption of normal economic life in Europe; and this can be done only through a thorough reconsideration of the injustices that have been put upon the German people by the conditions of the armistice and the peace treaty."

*Germany in Travail*, by Otto Manthey-Zorn (Marshall Jones Co., pp. xi, 139), is a scholarly analysis of the state of mind in present-day Germany as expressed in its literature, drama, music, religion, schools and universities. Although the author is concerned chiefly with the spiritual forces operating in Germany, the first eighteen pages give a very clear resumé of recent efforts toward political readjustment. The volume is the outcome of a half-year's leave of absence granted to the author by Amherst College for the purpose of studying at close range conditions in Germany.

*Reconstruction in France*, by William MacDonald (Macmillan Co., pp. viii, 349), is a comprehensive and readable account of the progress of restoring the devastated portions of that country, the problems of

financing this work and the administrative machinery and private organizations set up for this purpose.

*Gambetta and the Foundation of the Third Republic*, by Harold Stannard (Small, Maynard and Co., pp. vi, 266), is a thorough account of Gambetta's public career. His early family life and the story of his only romance are also touched upon briefly. The book is mainly a critical, yet defensive, study of Gambetta's policies during the opening years of the Third Republic. The difficulties that beset Gambetta while Minister of the Interior at Tours, and which he in so large measure overcame, are vividly described; and the wonder is not that there was so much criticism and opposition but that Gambetta accomplished so much real good in spite of it all.

*Immortal Italy*, by Edgar A. Mowrer (D. Appleton & Co., pp. 418), is a Sunday supplement account of Italy since 1870 by a newspaper man. The very title shows the author's irresistible impulse to use headlines. There is a great deal of worthwhile information about Italian politics during the war, the socialists and Facisti, and a clever account of D'Annunzio's expedition, all told from a slightly radical standpoint, but Mr. Mowrer's attempt to write history is not altogether a success.

The history, geography, art, literature and the present problems of Roumania are discussed by Charles Upson Clark in his book on *Greater Roumania* (pp. 477) published by Dodd Mead & Co. The author is an ardent advocate of Roumania and is anxious to give all the information possible. Sometimes this leads him into giving too many statistics at a dose or too long a list of authors with naught to remember them by, but in general the book shows the good lecturer that the author is, and certainly attains its purpose of interesting the reader in Roumania.

Alfred E. Zimmerman has given us his impressions on post-war conditions in a somewhat popular book entitled *Europe in Convalescence* (Putnams, pp. xiii, 237). He believes that a solution of the present "perplexities and complications can be found in one way alone, along the simple and well-tried road of the old Concert of European Powers" and that for this purpose the "goal of all good Europeans . . . should be to work for the establishment of relations of mutual confidence between Britain, France and Germany." As a beginning he is of the opinion that the claims upon Germany should be reduced, and that to

make this possible England should renounce her reparation claims in favor of France. This should be accompanied by a pledge on the part of England to aid France in the case of external aggression. In other words a firm Anglo-French understanding is regarded as the best basis for an Anglo-French-German reconciliation.

*The Organization of a Britannic Partnership*, by R. A. Eastwood (Longmans, Green and Co., pp. xi, 148) is a clear, concise and readable account of the development of dominion self-government and of those forces which, in the author's opinion are making necessary a readjustment of the relations between the United Kingdom and the dominions. The new machinery suggested by the author for regulating the affairs of the empire include an annual imperial conference of the dominion premiers to consider general policies; the appointment of resident dominion ministers who would be available for continuous consultation during the years intervening between the meetings of the imperial conferences; and the amalgamation of the House of Lords as a court of appeal with the judicial committee of the Privy Council so as to create a new supreme court of appeal for the empire which would bring about uniformity in the interpretation of both imperial and dominion law. Federation is rejected for practically the same reasons as are set forth by Dicey in his *Introduction to the Law of the Constitution*.

*Twenty Years*, by Cyril Alington (Oxford University Press, pp. 207), is a study in the development of the English party system during the important period between 1815 and 1835. It is a scholarly and skillful description of the important political personalities of the time and of parliamentary conflicts, enlivened by numerous anecdotes and illustrated with reproductions of contemporary cartoons. The chief criticism of the book is that the author dwells too much on parliamentary personalities and not enough upon the social and economic forces which lay behind the reform act. But what appears as a shortcoming to political scientists may be a gain for the general reader because the account of persons is more interesting to many than an account of social and economic developments.

Sir Henry Lucy's book on *Lords and Commons* published by E. P. Dutton and Co. (pp. 256) is a delightful result of his fifty years as a parliamentary reporter. His accounts of quaint customs and of eminent parliamentarians are from personal observation and are told informally.



Another book which also discusses certain of the great figures of English public life is *Political Ideas and Persons* by John Bailey (pp. 252), also published by E. P. Dutton. This is for the most part a collection of reviews of other people's books, such as Strachey's *Queen Victoria* and Monypenny and Buckle's *Disraeli*. The last part of the book contains several essays on present-day problems such as "After the War," and "National and International." The chapters devoted to personalities are admirable presentations which leave the figures standing vividly before the reader and are more interesting than the later chapters upon general topics.

*Some Revolutions and Other Diplomatic Experiences*, by Sir Henry G. Elliot (E. P. Dutton and Co., pp. 300), gives sidelights on the history of several countries at interesting junctures in their affairs. The author was at Naples when the Bourbon monarchy was expelled, at Greece when King Otho was dethroned, and was in Turkey during a good many diplomatic crises, one of the most important of which was the Constantinople conference. Sir Henry's observations are not always according to the generally accredited version of history, and his book in some instances is bound to open a discussion of whether he was right or not, but taken as a whole it is a valuable contribution to the history of the events he witnessed.

*The Rising Temper of the East*, by Frazier Hunt (Bobbs-Merrill Co., pp. 247), is a dramatic and popular account of what the writer saw with his own eyes in India, China, Japan, Korea, Australia, Egypt, Mexico, the Philippines and Haiti. In the earlier chapters the author expresses very decidedly the opinion that the white man's domination by force over the people of the East must cease, but toward the end of the book he frankly admits that none of these countries is yet ready for the freedom which it so ardently desires. The book is intensely human and one of its most striking merits is that it emphasizes distinctly the difference between the national aspirations of the East and the so-called menace of the colored races to the white.

*The Foundations of Japan*, by J. W. Robertson Scott (D. Appleton and Co., pp. xxvi, 446), differs from most other books on Japan in that it is concerned largely with the life, customs, problems and institutions of the rural population rather than the rapid commercial and industrial expansion of that country or its foreign relations. The author's point

of view is summarized in the following quotation from the introduction: "The basic fact about Japan is that it is an agricultural country. Japanese aestheticism, the victorious Japanese army and navy, the smoking chimneys. . . ., the pushing merchant marine, the Parliamentary and administrative developments of Tokyo and a costly world wide diplomacy are all borne on the bent backs of . . . . the Japanese peasant and his wife." The book is based upon personal observations and experiences which the author has presented in a most delightful manner. For the student in search of detailed facts there is an appendix of some forty pages to which the more technical and statistical data have been relegated.

*The Shantung Question*, by Ge-Zay Wood (Revell, pp. 372), is a history of the Shantung difficulties from the German occupation of Kiaochow, in 1897, to the settlement at the Washington conference. Available documents are given in full in the appendix. Emphasis is laid upon the negotiations at Paris, 1919, and at Washington, 1921-2. Separate chapters deal with such problems as railways and mines. The text is well supplied with extensive quotations from source material. The author considers the Washington settlement "much better than hoped for."

*The Second Year Book of the League of Nations* (pp. 423) edited by Dr. Charles H. Levermore has been published by the Brooklyn Daily Eagle. There is a concise description of the work of the council and assembly of the league during 1921, as well as the proceedings of the Supreme Council which is the guiding force although not technically within the League. The editor regards the Washington conference as a meeting of the Supreme Council with a few invited guests, and therefore includes a full account of the conference and the texts of the treaties and resolutions adopted thereby.

Professor W. B. Munro of Harvard University and C. E. Ozanne of the Central High School of Cleveland are the authors of a recent high school text-book, entitled *Social Civics* (Macmillan Co., pp. xiii, 697), which presents many points of difference from other books of a similar nature. In the first place the work covers a wider range than most books on civics since it includes not only an analysis of governmental framework and functions but also a number of topics dealing with economics, sociology and international relations which are pre-

sented under the heading of "Civic Activities." These topics are not considered as isolated subjects but are linked up closely with governmental action and policy. In the second place the supplementary material is more abundant than usual with over one hundred pages of carefully selected references, group problems, short studies, questions and topics for debate. In the third place the illustrations are unique, being reproductions of certain masterpieces of mural art each symbolizing some important phase of government rather than the ordinary photographs of voting machines, public buildings, etc. The chief merit of the book, however, is not to be found in the features of arrangement and illustration but in its thoroughness and accuracy and the presentation of subject matter in a manner which is scholarly and at the same time within the grasp of youthful minds for which the volume is intended.

*We and our Government*, by Jeremiah Whipple Jenks and Rufus Daniel Smith (published under the auspices of the American Viewpoint Society by Boni and Liveright, pp. 232), represents a new departure in the preparation of elementary text-books on American government. In addition to the body of the book there are over five hundred carefully selected illustrations arranged along the outside column of the page with a running explanation, presenting a continuous narrative which not only explains the text in a graphic manner but constitutes a story which might be read independently of the text. No more useful book could be found for continuation and evening classes in citizenship among those whose knowledge of the English language is somewhat limited, and it should also be helpful in the regular elementary and secondary schools as supplementary to a more detailed text.

For high school courses in the problems of democracy two useful text books have been made available within the last few months. R. O. Hughes' *Problems of Democracy* (Allyn and Bacon) has the conspicuous merits of the author's earlier texts, being comprehensive, well-arranged and practical in its tone. *Economics and the Community*, by John A. Lapp (The Century Co.), has been written from the view that the teaching of elementary economics has been hindered by the lack of concrete text material related to community life, and the plan of presentation therefore provides for a preliminary gathering of local data for each chapter before beginning the study of the text.

*Civic Education*, by David Snedden (World Book Co., pp. xiii, 333), is designed to aid educators who are engaged in the teaching of the

social sciences in elementary and secondary schools. Part I consists of a number of valuable suggestions to teachers as to the general meaning, importance, need and objects of civic education. Part II is devoted to a more detailed study of the topics which are mentioned in Part I; while the last part contains courses of study for civic education, problems for research and about a dozen sample studies which illustrate the value of the case method of approach to the study of various practical problems of civic education.

A special commission on Correlation of Secondary and Collegiate Education of the Association of Collegiate Schools of Business has issued a report entitled *Social Studies in Secondary Schools* (University of Chicago Press, pp. x, 117). The report takes up such topics as the importance of social studies in the business curriculum, the actual position of social studies in secondary curricula, what the collegiate schools of business administration should do to provide well-balanced instruction in such studies; and outlines a program of social studies for the junior high school which it regards as the strategic point for attack at the present time. There is a valuable appendix of about fifty pages containing references to the more important books and articles on secondary and commercial education and the teaching of special subjects in the secondary school curriculum.

Three recent college text-books which cover special fields in American history are *The Foundations of American Nationality*, by Evarts Boutell Greene (American Book Co., pp. xii, 614), *The United States of America: Through the Civil War*, by David Saville Muzzey (Ginn & Co., pp. vii, 621, xxxix) and *A History of the United States Since the Civil War*, Vol. II, by Ellis Paxson Oberholtzer (Macmillan, pp. xi, 649). Professor Greene's book is a companion volume to *The Development of American Nationality* (1783 to the present time), by C. R. Fish, and covers the events from the early explorations down through the ratification of the federal Constitution. Full recognition is given to social and economic as well as to strictly political history and the book gives evidence throughout as the work of one who is a scholar and thorough master of his subject. Professor Muzzey's book is the first volume of a history of the United States. After devoting two introductory chapters to the colonial background and the revolution the remainder is a chronicle of events from the founding of the national government down to the assassination of President Lincoln. The author's aim is to trace

the "development of the American ideal of democracy, or self government in freedom." The second volume of *A History of the United States since the Civil War* by Professor Oberholzer includes a much shorter period than the other two books (1868-1872), being an account of the early reconstruction period, the impeachment and trial of Andrew Johnson and the greater part of the first Grant administration. Covering as it does a field which has been exhaustively explored by only one other historian, James Ford Rhodes, Professor Oberholtzer's book should be read with interest by students and teachers of history. Of particular interest are the chapters on reconstructing the South, the Alabama claims (in which the author has made use of certain new sources of information), the campaign of 1868; and a graphic account of the extravagance and corruption during the era when American politics were at their lowest ebb. The vivid but sometimes biting characterization of individuals adds much to the interest of the book.

*New Viewpoints in American History*, by Arthur Meier Schlesinger (Macmillan Co., pp. x, 299), is an exposition and analysis of some of the factors which have influenced American history such as immigration, geography, economic influences, radicalism and conservatism, Jacksonian democracy, the doctrine of state rights and political parties. There is little especially new in the material presented, and not always in the point of view, but the student of political science will find a close correlation of history and government in this volume and an extremely readable account of some of the larger social and economic movements in American history.

*American Democracy*, by Willis Mason West (Small, Maynard & Co., pp. xiii, 758), is a study of American history from the old-world background down to the present day with particular reference to the constant struggle for democracy in society, politics and industry. An interesting feature of the book is the emphasis given to recent developments, practically one-fourth of the book being devoted to the period since 1876. Political and economic factors in American life are stressed, and the student interested in American government and the working of democracy will find much useful material in this book, which is written in an original and readable style.

Doubleday, Page and Co. have published a new edition of *From Isolation to Leadership* (pp. 296), by Professor John H. Latané, the original

edition of which appeared in 1918. The earlier chapter on "The War Aims of the United States" has been rewritten, and two new chapters have been added dealing with the Treaty of Versailles and the Washington conference, thus bringing the history of American foreign policy down to date.

*Behind the Mirrors* (Putmans, pp. ix, 236) by the anonymous writer of *The Mirrors of Washington* lacks many of the qualities which made the latter book so successful. The reader misses the incisive characterization of important personages, the penetrating anecdotes and the political gossip, and finds instead a rather dry, discursive and not always convincing description of what the author calls "The Psychology of Disintegration at Washington." Here and there are found a few clever thrusts and some interesting light is thrown upon the activities of the agricultural bloc. The author leaves the impression that the hope of future politics lies in organized minorities which will raise us out "of the governmental bog into which we have sunk."

The Extension Division of the University of Wisconsin has issued a pamphlet entitled an *Introduction to the Study of United States History*, by C. R. Fish (pp. 75), which contains many helpful suggestions for those who are organizing courses in American history.

Carter Godwin Woodson has written a book on *The Negro in our History* (The Associated Publishers pp. 393), which is intended primarily as a text for high school students. The general reader, however, desirous of knowing the leading facts of negro life and history in the United States will find this volume of great interest and value. Emphasis is placed upon the social developments of the race and its economic achievements, and the author has correlated the history of the negro in this country with that of the American people in general.

Among the recent University of Illinois Studies in the Social Sciences (vol. IX, no. 3, pp. 245) is a monograph on *English Government Finance, 1485-1558* by Frederick C. Dietz. The work is something more than a dry account of revenues and expenditures; it shows clearly that the Tudors were enabled to build up strong governments largely because of the development of new systems of revenue, and explains how the increased economic unification of England and the chief forms of wealth of the time were turned to the service of the state. The author points

out, however, that it was fortunate for the liberties of the people that the plans of the Tudors for securing income for the Crown without the sanction of the popular representatives were not a permanent success.

*A Short History of the Irish People*, by Mary Hayden and George A. Moonan (Longmans, Green and Co., pp. viii, 580), is a scholarly and comprehensive account of Ireland's development from the earliest times down to 1900 with a brief review of recent events from that date to 1920. Although written from a national point of view the authors have made every effort to present an accurate and unbiased narrative, and the book stands out in contrast to the usual melodramatic stories of Ireland's heroes and Ireland's woes. Even the periods of Cromwell and William III are considered without prejudice.

*The Story of the Irish Nation* (Century Company, pp. 402) has been very highly popularized by Francis Hackett. Both Ireland's heroes and Ireland's woes are described in this sensational version of history.

*Dublin University and the New World*, by Robert H. Murray (Society for Promoting Christian Knowledge, pp. 96), is a small book which tells the story of three sons of Trinity College, Dublin, who played a part in the early days of the New England colonies, namely: Samuel Mather, Increase Mather and John Winthrop, the younger, governor of Connecticut.

The C. A. Nichols Publishing Company has just issued the first volume of *The New Larned History for Ready Reference, Reading and Research* (vol. I, A-Balk, pp. xxiv, 836). This and the other eleven volumes which are to appear soon is a complete revision of the earlier work of the late J. N. Larned which first appeared in 1893-94 in five volumes under the title of *History for Ready Reference*. When complete the work will undoubtedly be the most useful universal history in the English language. The arrangement is by topics alphabetically with carefully prepared cross references, and the subject matter differs from that of most other works of a similar nature in that the articles are not written by a single authority but are quotations from various standard works, thus drawing upon the labors of several thousands of scholars and writers not only for information but for different points of view.

Volume III of the Cambridge Medieval History, on *Germany and the Western Empire* (Macmillan Co., pp. 700), covers the period from the death of Charlemagne to the latter part of the eleventh century. It includes five chapters each on France and Germany, two on England, one each on Burgundy, Italy, the Vikings, the Western Caliphate, the Church, Feudalism, and Byzantine and Romanesque Arts, and two on Learning and Literature. As noted by J. P. Whitney in the Introduction, the period covered is more than most periods what is sometimes called transitional.

In a book entitled *Labor and Democracy* (Macmillan Co., pp. xii, 213), William L. Huggins, presiding judge of the Kansas court of industrial relations, has written an account of the origin and workings of that court and of the legislation upon which it is based. The author also discusses by way of introduction the subject of government in its relation to industry. There is an appendix containing the text of the Kansas Industrial Act which was drafted largely by Judge Huggins, and five typical opinions of the industrial court. Coming as it does from one who has been in the closest possible contact with the facts, the book throws a new and authoritative light upon a most interesting experiment in American government.

A second edition of *Labor Problems and Labor Legislation* (pp. 135), by John B. Andrews, has been published by the American Association for Labor Legislation. This is a brief and simple, but excellent introduction to the subject, dealing with such topics as employment, wages, hours, safety, health, self government in industry, social insurance and enforcement of laws.

A recent monograph on *The Evolution of Industrial Freedom in Prussia*, by Hugo C. M. Wendel (New York University Press, pp. viii, 114), explains the provisions and the effects of the Prussian industrial law of 1845 (the purpose of which was to establish a uniform system of industry throughout the kingdom), the reaction of the workingmen to the law and the subsequent policy of the government resulting from various petitions and protests of 1847 and 1848.

The primary purpose of the *Principles of the New Economics*, by Lionel D. Edie (Thomas Y. Crowell Company, pp. xiii, 525) is to integrate what the author calls the ideas of the new psychological



school of economic thinkers with those of the old classical school. The first two of the Cambridge Economic Handbooks, of which J. M. Keynes is the general editor (Harcourt, Brace and Company) are *Supply and Demand*, by H. D. Henderson (pp. 181) and *Money*, by D. H. Robertson (pp. 181).

Among recent publications on economic problems are the following, issued by the Ronald press: *Human Factors in Industry*, by Harry Tipper (pp. v, 280), a study of the many experiments that are being made, especially in group organization, with a view to better industrial conditions; *Chapters on the History of the Southern Pacific*, by Stuart Daggett (pp. vi, 470), the result of some eight years of original research in public and company records and other source material; and the ninth annual edition of *Income Tax Procedure, 1922*, by Robert H. Montgomery (pp. xxi, 1911), a comprehensive and useful volume which covers the new Revenue Act of 1921 and brings the income tax procedure up to date.

*Our Railroads Tomorrow*, by Edward Hungerford (Century Company, pp. 332), is a somewhat non-technical discussion of the problems of American railroads, both present and future. *The Stock Market*, by S. S. Huebner (D. Appleton and Company, pp. xv, 496), is intended primarily as a text book for advanced college classes, but the business man will also find it of practical value and interest. An enlarged and almost completely rewritten second edition of the *Law of Building and Loan Associations*, by Joseph Sondheim (pp. 376), has been published by the Smith-Edwards Company.

One of the latest additions to the Social Welfare Library published by the Macmillan Company is Edward T. Devine's *Social Work* (pp. xvi, 352). The author, who has had a long experience in social work, describes the agencies which deal with the poor, the handicapped and the delinquent. There are especially useful chapters on methods of organization, coördination, finances and preparation for social work. In the *Settlement Idea* (pp. xxvii, 213), issued by the same publishers, Arthur C. Holden gives a brief survey of the social settlement movement, and then the needs of industrial communities, the methods of social work, the benefits of settlement activity, and its administration and financial support.

*Wall Shadows: A Study in American Prisons*, by Frank Tannenbaum (Putnam's, pp. xvii, 168), is a description of prison conditions and methods of administration based upon first-hand information obtained, largely as a result of a year's imprisonment for unlawful assembly and from a visit during 1920 to about seventy penal institutions throughout the country. The greater part of the book is taken up with the evils of our prison systems, but in the last chapter the author sets forth a constructive program for improvement.

*Some Problems of Reconstruction*, by Annie M. MacLean, is the title of the latest of the small volumes in the *National Social Science Series* published by A. C. McClurg and Company (pp. 150). Some of the problems touched upon are the maintenance of democracy, industrial unrest, the labor of women, the treatment of the negro, Americanization, housing, education and the dealing with radicalism.

A new book on *Socialism: An Analysis* has come from the hand of the well-known German philosopher Rudolph Eucken (Scribner's, pp. 188). A constructive statement of the Socialists' philosophy is followed by a searching examination of their ideals.

The Macmillan Company has published a small booklet entitled *Lincoln, the Greatest Man of the Nineteenth Century* (pp. 77) by Dean Charles Reynolds Brown of Yale University. Discussing first the difficult problems which Lincoln faced when he assumed office, the author enlarges upon what he regards as the chief elements in Lincoln's greatness.

Messrs. Houghton Mifflin Company have brought out a book entitled *American Portraits, 1875-1900*, by Gamaliel Bradford (pp. xii, 248), in which the author analyzes eight personalities of the last quarter of the nineteenth century. There is nothing particularly new or striking in the points of view presented, but students of history and politics will find something of interest in the sketches of James G. Blaine, Henry Adams and Grover Cleveland.

The latest of the *Smith College Studies in History* is Major Howell Tatum's *Journal while Acting Topographical Engineer (1814) to General Jackson*, edited by Professor J. S. Bassett (pp. 138). This journal

throws important light upon the battle of New Orleans and deserves to be ranked among the original narratives of that crucial campaign.

Houghton Mifflin Co. have published a book of stories concerning the work of the Pennsylvania state police by Katherine Mayo entitled *Mounted Justice* (pp. viii, 298).

## RECENT PUBLICATIONS OF POLITICAL INTEREST

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### BOOKS AND PERIODICALS

#### AMERICAN GOVERNMENT AND POLITICS

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